

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON,
CALIFORNIA, AMENDING CHAPTER 3.74 OF THE FULLERTON MUNICIPAL
CODE RELATING TO POLICE INITIATED TOW OPERATIONS

WHEREAS, Chapter 3.74 of Title 3 of the Fullerton Municipal Code (FMC) outlines regulations applicable to police towing operations in the City.

WHEREAS, subsection (A)(1) of Section 3.74.030 of the FMC currently provides that the Chief of Police, at the direction of the City Council, may contract with a single tow operator as the City's official police tow operator or may contract with no more than three tow operators, to be used on a rotational basis for all police-initiated calls for services.

WHEREAS, subsection (A)(2) of Section 3.74.030 currently provides that the Chief of Police, at the direction of the City Council, may award up to three franchise contracts for towing services for all police tows.

WHEREAS, subsections (A)(1) and (A)(2) of Section 3.74.030 are duplicative and require clarification.

WHEREAS, subsection (b) of Section 12110 of the California Vehicle Code authorizes a public entity to require a fee in connection with the award of a franchise for towing vehicles on behalf of the public entity, provided that the fee may not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.

WHEREAS, the City Council desires to amend Chapter 3.74 to expressly require that each police tow operator pay a franchise fee.

WHEREAS, the City Council desires to amend Chapter 3.74 to expressly prohibit police initiated tow operations except where a company has been granted a franchise by the City and has executed a franchise agreement with the City.

WHEREAS, the City Council desires to amend Section 3.74.030 to clarify the duplicative language and to make other revisions and clarifying changes throughout Chapter 3.74.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.74 of Title 3 of the Fullerton Municipal Code is hereby deleted in its entirety and replaced as follows:

Chapter 3.74
POLICE INITIATED TOW OPERATIONS

3.74.010. Definitions.

As used in this chapter:

- A. "Building Official" means the Building Official of the City of Fullerton, or his/her designee.

B. "Chief of Police" means the Chief of Police of the Police Department, or his/her designee.

C. "City Council" means the City Council of the City of Fullerton.

D. "City Manager" means the City Manager of the City of Fullerton, or his/her designee.

E. "Consensual Tow" means the towing of a vehicle at the vehicle owner's or lawful operator's request.

F. "Director" means the Director of Community Development of the City of Fullerton, or his/her designee.

G. "Fire Department" means the Fire Department of the City of Fullerton, or any authorized representative thereof.

H. "Guidelines" means the City of Fullerton Police Department Towing Guidelines and Requirements.

I. "Non-Consensual Tow" means the towing of a vehicle without the vehicle owner's or lawful operator's consent.

J. "Police Department" means the Police Department of the City of Fullerton, or any authorized representative thereof.

K. "Police initiated tow operations" means towing a vehicle at the request of the Fullerton Police Department. "Police initiated tow operations" include vehicle impounds and no-preference vehicle tows. "No-preference tow" means a tow of a vehicle at the request of the Police Department, where no violation of law has occurred, such that would require a vehicle impound. No-preference tows include, but are not limited to, the towing of a vehicle from the scene of an accident where the driver of the vehicle to be towed is not incapacitated and has not requested a AAA tow or specific tow company.

L. "Police tow operator" means the tow operator(s) under contract with the City of Fullerton Police Department for police initiated calls for service.

M. "Tow operation or service" means any activity of towing and/or storing of vehicles, including the removal of vehicles from private property and the performance of other services incidental to towing, for compensation within the city, and shall include police tow operators, designated by an agreement with the Police Department.

N. "Tow operator" means an individual, entity, group of persons, or a business, that obtains a tow operation permit and performs tow services in the City of Fullerton. "Tow operator" shall also include the tow operator's agents, assignees or employees.

O. "Tow unit" means any vehicle, which is used to tow a motor vehicle as part of a tow operations business.

P. "Tow unit driver" means the driver of a tow unit.

Q. "Vehicle Code" means the California Vehicle Code.

3.74.020. Applicability; exceptions.

A. The provisions of this chapter apply to all police tow operators.

B. The provisions of this chapter shall not apply to consensual and nonconsensual tow operations.

3.74.025. Franchise required.

Except as specified in this chapter, it is unlawful for any person to solicit or perform the business of police initiated tow operations in the city unless:

A. A franchise therefor has been granted pursuant to the provisions of this chapter and such franchise is in full force and effect; and

B. A written franchise agreement therefor has been executed between such person and the

city and such agreement is in full force and effect.

3.74.030. Authority to grant nonexclusive franchises; requirements; city operated storage yard.

A. The City Council may award one (1) to three (3) franchises for towing services on such terms and conditions as the City Council may establish in its discretion and in accordance with the provisions of this chapter. If more than one (1) franchise is awarded, services shall rotate among the franchisees on an equal basis.

B. The franchise for police tow operators shall be opened to competitive bidding at least once every ten (10) years. The Chief of Police, at his/her discretion or at City Council's direction, may solicit competitive bids on a more frequent basis than once every ten (10) years.

C. The police tow operators shall comply with all the provisions of this article, the Guidelines, and the terms and conditions of the franchise agreement, and any amendments made thereto from time to time.

D. The city may, at its option, operate its own vehicle storage yard for vehicles that have been impounded for thirty (30) days pursuant to Section 14602.6(a) of the Vehicle Code.

3.74.035. Franchise fee; late penalties.

A. Each police tow operator issued a franchise shall pay a franchise fee in such amount as may be set, from time to time, by resolution of the City Council.

B. Any franchise fee remaining unpaid on the stated due date shall be subject to a late penalty and interest in the amounts established by resolution of the City Council.

3.74.040. Business operations - prohibited conduct.

A. Any of the following shall be a violation of this chapter, and shall be grounds for immediate suspension or termination of a franchise agreement:

1. The police tow operator has not filed adequate evidence of liability insurance coverage with the Chief of Police or has allowed its insurance coverage to lapse or be cancelled.

2. Violation of any rule, regulation, or condition set forth in or authorized by this chapter.

3. Violation of any laws of the state or city, including zoning laws, with respect to the operation of the business by the police tow operator.

4. Failure to comply with the regulations set forth in the franchise agreement or any provisions of the Guidelines.

5. If any police tow operator's employee, or any person connected or associated with the police tow operator as an operator, director, officer, stockholder, general manager, or person who is exercising managerial authority on behalf of the police tow operator, has committed any one of the following acts:

a. Had an inspection or investigation by the Building Official, Police Department or Fire Department, which revealed a deficiency, violation or conduct that endangers the peace, health, safety and general welfare of the public;

b. Employs tow truck drivers under eighteen (18) years of age;

c. Fails to notify the Police Department in writing of the name, address and driver's license number of any newly employed tow truck driver within ten (10) business days of the hire date, or fails to notify the Police Department within ten (10) business days of any tow truck driver who is no longer employed by the franchise holder;

d. Fails to obtain and maintain a current Fullerton business license;

e. Has allowed the services of a driver with a record of excessive violations of the

Vehicle Code which has resulted in the suspension or revocation of their driver's license or a driving under the influence, reckless driving or wet reckless conviction within the last three (3) years, to remain in its employment as a driver;

f. Fails to maintain control of any personal property, vehicle accessories and vehicles that have been towed;

g. Has knowingly made false, misleading or fraudulent statements of a material fact in a report or record required to be filed with the Police Department, or any other law enforcement agency;

h. Has stopped and solicited on any street, highway or public thoroughfare the rendering of assistance to a person or disabled vehicle without first being requested to do so, except to render emergency aid when there exists an imminent peril to life or property;

i. Has released a vehicle impounded for evidence purposes, or for a 30-day hold pursuant to Vehicle Code Section 14602.6(a), without the prior written authorization of the Chief of Police. Any violation of this paragraph is subject to a fine of no less than \$250.00 and no more than \$1,000.00, and/or up to six (6) months in jail.

B. The following acts by any police tow operator or his/her employee, or any person connected or associated with the police tow operator as an operator, director, officer, stockholder, general manager, or person who is exercising managerial authority on behalf of the police tow operator, shall be grounds for the immediate suspension or termination of the franchise agreement:

1. Has been convicted of a felony or any crime involving theft, embezzlement, stolen property, fraud or crimes of violence within the last five (5) years;

2. Has committed any false, fraudulent, deceptive or dangerous act while conducting towing service business;

3. Has published, uttered or disseminated any false, deceptive or misleading statements or advertisement in connection with the operation of the towing service;

4. Has conducted the towing service in a manner contrary to the peace, health, safety and general welfare of the public;

5. Has committed or permitted other persons to commit, through an act of omission or commission, any felony or misdemeanor crime involving registerable sexual offenses (pursuant to Penal Code Section 290);

6. Has committed or permitted other persons to commit, through an act of omission or commission, any felony or misdemeanor crime involving moral turpitude, or a felony involving sale or use of a controlled substance, or any act of dishonesty or fraud within the last five (5) years;

7. Fails to comply with any Vehicle Code, federal, state, or county regulations or laws relating to towing and/or storing of vehicles, including the impounding and storing of vehicles from private property;

8. Has obtained a tow franchise by use of fraud, trick, dishonesty or forgery;

9. Has failed to correct any deficiencies or equipment violations within ten (10) days following notice by the Police Department to the police tow operator of the deficiencies or equipment violations. This subsection shall not apply to unsafe vehicles, as referenced in Vehicle Code Sections 2800(d), 24002, and 24004;

10. Has recommended or promoted the services of any body shop, repair shop or any other business to the owner or driver of any vehicle prior to hooking the vehicle, during the tow or while in the tow operator's custody.

3.74.050. Business location.

A. Any police towing operation shall maintain a physical location from which the business is conducted. The physical location shall provide an office with an adjacent yard for vehicle storage. The location, which must be within a five (5) mile radius of Fullerton City Hall, 303 W. Commonwealth, Fullerton, CA 92832, shall be approved by the Chief of Police, prior to a police tow franchise being awarded. A police tow operator may establish and maintain an additional location within the city as a yard for vehicle storage, provided that the tow operator has obtained the Chief of Police's written approval for such additional location.

B. No police tow operator shall store any vehicle towed pursuant to its agreement with the city at a location other than the one(s) specified in the agreement with the city.

C. Where no conflict exists with the city's zoning regulations or other provisions of this code, the Chief of Police may approve in writing a change of location. To obtain such approval, a change of location form must be submitted to and approved by the Revenue & Utility Services Bureau, Administrative Services Department, and to the Police Department.

3.74.060. Rates and charges; change of rates; itemized statement.

A. The police tow operator's rates for towing and storage of vehicles under the agreement with the city shall not exceed the rates established by City Council resolution, and shall be incorporated into the agreement. The police tow operator's rates shall be subject to periodic increases, as determined by the agreement.

B. The police tow operator shall not charge for services not performed, services or equipment not employed, used or needed, or otherwise materially misstate the nature of any service performed or equipment used.

C. The police tow operator shall maintain on file with the Police Department a current schedule of rates and charges for each offered service. No charge other than the rates and charges specified in such schedule shall be made.

D. A police tow operator shall make available for inspection and copying his or her rate schedule within 24 hours of a request without a warrant to any law enforcement agency or officer, the Attorney General, district attorney, or the city attorney.

E. A police tow operator shall post and maintain, conspicuously, in the operator's business office and/or at any location where customers' financial transactions take place, a list of the rates and charges for all services offered.

F. Each tow unit shall carry a printed copy of the current rate schedule, listing the charge rates for each service provided by the tow operator for the general public.

G. When requested, the tow truck driver shall allow a citizen whose car is being towed, or a police officer or other designated employee of the city, to review the rate list.

H. Rates for lien fees are to comply with Vehicle Code Section 22851.12.

I. Payment of tow fees shall be accepted as prescribed within Vehicle Code Section 22651.07 by cash, insurer's check, or a valid bank card, or, at the option of the tow operator, by check or other acceptable form of payment.

J. 1. A police tow operator shall accept a valid credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except for the purposes of this section, credit card does not include a credit card issued by a retail seller.

2. A police tow operator shall conspicuously display, in that portion of the storage facility office where business is conducted with the public, the notice required by Vehicle Code Section 22561.07(e).

3. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code.

K. The police tow operator shall keep a reasonable amount of cash on hand to make change for cash transactions during normal business hours.

L. The police tow operator shall not condition the release of personal property in any manner unless expressly authorized to do so by Vehicle Code Section 22651.07.

3.74.070. Removal of vehicles.

The following rules and regulations shall be observed by the police tow operators:

A. Notwithstanding any other provision of this Code, the police tow operator shall not release any vehicle that was impounded as evidence, or for a 30-day hold pursuant to Section 14602.6(a) of the Vehicle Code, without written permission of the Fullerton Police Department.

B. If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day.

C. If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid. A business day is any day in which the police tow operator is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

D. A vehicle shall not be removed to a location other than that listed as the business address of such police tow operator without first receiving written authorization to do so by the Police Department.

E. A police tow operator shall not conspire with any person to defraud any owner of any vehicle, or any insurance company, or any person financially interested in the cost of the towing or storage of any vehicle, by making false or deceptive statements relating to the towing or storage of any vehicle.

F. A police tow operator shall not remove a vehicle involved in a collision prior to the arrival of the Police Department in the event of any of the following:

1. A person, as a result of such collision, suffered death or injury;
2. The driver of an involved vehicle, or a party to such collision, was under the influence of a drug or intoxicant of any nature; or
3. There is evidence that such vehicle was involved in a hit and run collision.

3.74.080. Storage facility.

A vehicle removed pursuant to this chapter shall be stored in a facility that meets all of the following requirements:

A. Shall remain open during normal business hours and releases vehicles after normal business hours.

1. A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

2. Notwithstanding any other provision of law and for purposes of this paragraph, "normal business hours" are Monday to Friday, inclusive, from 8 a.m. to 6 p.m., except state and federal holidays.

B. Shall be adequately fenced with gates locked and secured and reasonably well-lit to maintain a maximum of security for stored and impounded vehicles. Perimeter gates and

fencing shall be maintained to ensure security and discourage unauthorized access.

C. All vehicle storage lots shall be inspected and approved by the Police Department.

D. Open area storage yard(s) shall comply with all requirements of the zoning and building codes of the jurisdiction of the facility.

E. Shall have a working public pay telephone in the office area that is open and accessible to the public.

F. The tow operator shall repair any damage to wall structures and fences within 24 hours to ensure proper protection for the stored/impounded vehicles. Notwithstanding the foregoing, if the damage can allow the security of the facility to be breached, the damage must be repaired or security personnel posted at the site of the damage immediately upon the discovery of the damage.

G. Prior to the utilization of a new storage facility that meets the requirements of Section 3.74.050 of this chapter, the tow operator shall obtain the approval of the Chief of Police or his or her designee and furnish the new address thirty (30) days in advance for inspection.

H. All vehicles impounded for evidence purposes shall be stored in an enclosed and secured facility that is maintained pursuant to industry best practices and requirements of the Fullerton Police Department, including appropriate chain of custody documentation, to preserve evidence. Any damage to the enclosure and/or locking mechanisms shall be repaired immediately, with such damage and repair documented and reported immediately to the Fullerton Police Department. The police tow operator shall ensure that only authorized personnel and the Fullerton Police Department shall have access to the facility, and that the police tow operator's personnel shall not tamper in any manner whatsoever with vehicles stored for evidence purposes.

3.74.090. Inspection.

A. All police tow operators' towing vehicles, equipment, and facilities shall be inspected annually, with reasonable notice provided to the police tow operator, during normal business hours by the Police Department, or its designated agent. In addition to annual inspections, a police tow operator's towing vehicles, equipment, and/or facilities may be inspected at any time, with or without cause, with or without notice, by the Police Department, or its designated agent.

B. If any deficiencies or equipment violations are discovered during an inspection, the police tow operator will be so advised in writing. The police tow operator will be given ten (10) business days to rectify the deficiency or violation. Failure to comply may result in the franchise agreement being suspended until all violations are corrected. Notwithstanding the foregoing, if, in the opinion of the Police Department, the deficiencies or equipment violations which are discovered prevent any vehicle from being operated in a safe manner, the Police Department may direct that the unsafe vehicle(s) be taken out of service. Failure to comply will result in the police tow operator's franchise agreement being suspended until the unsafe vehicle(s) passes inspection.

3.74.100. Independent contractor.

In the performance of tow services for the city, the tow franchise holder shall act and be an independent contractor and not an agent or employee of the city, and shall obtain no rights or any benefits that accrue to the city's employees.

3.74.110. Subcontracting prohibited.

The police tow operator(s) shall not subcontract nor be permitted to subcontract for services.

3.74.120. Information regarding new or terminated tow truck drivers.

A. Each police tow operator shall file with the Police Department the name, address, date of birth, driver's license number, and all other information required of any tow unit driver employed by the franchise holder subsequent to the date of the tow operator franchise application, which information shall be filed not later than ten (10) business days following the effective date of hiring.

B. Each police tow operator shall notify the Police Department of the name of any tow truck driver no longer employed by such franchise holder. This notification shall be given to the Police Department no later than ten (10) business days following the last date of the driver's employment by the franchise holder.

3.74.130. Tow driver training.

Tow drivers for all police tow operators shall be proficient in the use of the tow truck they are driving and related equipment, including but not limited to lockout tools, to the extent necessary for the safe towing and recovery of various types of vehicles. It is the responsibility of the police tow operator to ensure its drivers are qualified and competent employees of the business. The training procedures must be in writing and the police tow operator must provide a copy to the Police Department.

3.74.140. Public liability insurance for towing services.

No police tow operator 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 Chief of Police and the Risk Management Department, 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. The police tow operator's policy of insurance shall also include coverage for garage keeper's legal liability, or the equivalent, in amounts satisfactory to the city's Risk Management Department. The police tow operator's policy of insurance 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. The police tow operator's policy of insurance shall be executed by a company duly licensed under the laws of the State of California to be an insurance business. Annual or periodic renewal certificates shall be filed with the Risk Management Department and with the Chief of Police upon renewal or change in coverage.

3.74.150. Vehicle release fee.

The Police Department shall charge a fee to effect the release of a vehicle that has been impounded and/or stored by the Police Department. The amount of the fee shall be set by City Council resolution.

3.74.160. Violations and penalties.

A. Every person, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a participant or worker in any way, who operates or conducts a police tow service in violation of any provision of this chapter, shall be guilty of a

misdemeanor.

B. Each person shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this chapter is committed, continued, or permitted to be committed or continued.

C. Any police tow operator establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and will be considered a public nuisance. The city attorney may prosecute a criminal action hereunder, or commence an action or actions in any manner provided by law. The city attorney may take any action deemed necessary and may apply to such court or courts having jurisdiction to grant such relief to abate or remove such tow operators from the city.

D. Nothing in this chapter shall absolve a police tow operator from any civil and/or criminal liability incurred by the failure of the police tow operator or his/her agents and employees to comply with the provisions of the Vehicle Code. All civil or criminal remedies under the Vehicle Code shall be in addition to all penalties under this chapter.

SECTION 2. Any provision of the Fullerton Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unconstitutional, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses may be declared unconstitutional.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective thirty (30) days from and after its passage.

ADOPTED BY THE FULLERTON CITY COUNCIL ON _____, 2020.

Jennifer Fitzgerald
Mayor

ATTEST:

Lucinda Williams. MMC
City Clerk

Date