

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 14, 2014		DATE SUBMITTED: December 23, 2013	
DEPARTMENT OF ORIGIN: Police		SUBMITTED BY: Chief Eric Buske	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: "Tow truck and vehicle storage businesses" amended ordinance.			
SUMMARY STATEMENT: An ordinance deleting Article IV, "Tow Truck and Vehicle Storage Businesses", of Chapter 126 of the Bryan City Code in its entirety and amending same to reflect changes in State law; establishing permit requirements; regulating fees for nonconsent tows, qualifications for rotation list and grounds for removal from rotation list; establishing permit application procedures; establishing requirements for vehicle storage facilities and equipment; establishing administrative and criminal penalties for violations of this ordinance; repealing all ordinances or parts of ordinances in conflict therewith; providing a savings clause; providing for severability; providing for codification; finding and determining that the meetings at which the ordinance was passed were open to the public as required by law; providing for publication in the newspaper; and providing an effective date.			
STAFF ANALYSIS AND RECOMMENDATION: The current ordinance governing "Tow Truck and Vehicle Storage Businesses" has not been amended in eleven years (2003). State law has changed and costs associated with operating these businesses have increased. Staff recommends approving the proposed amended ordinance to come in compliance with State law and to increase fees so they are in line with industry standards.			
OPTIONS (In Suggested Order of Staff Preference):			
1. Approve ordinance change.			
2. Do not approve and provide guidance for staff.			
ATTACHMENTS: Proposed ordinance.			
FUNDING SOURCE: No additional cost incurred by the City of Bryan.			
APPROVALS: Hugh R. Walker, 12/23/2013			
APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12/27/2013			
APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 12/30/2013			

ORDINANCE NO. _____

AN ORDINANCE DELETING ARTICLE IV, “TOW TRUCK AND VEHICLE STORAGE BUSINESSES”, OF CHAPTER 126 OF THE BRYAN CITY CODE IN ITS ENTIRETY AND AMENDING SAME TO REFLECT CHANGES IN STATE LAW; ESTABLISHING PERMIT REQUIREMENTS; REGULATING FEES FOR NONCONSENT TOWS, QUALIFICATIONS FOR ROTATION LIST AND GROUNDS FOR REMOVAL FROM ROTATION LIST; ESTABLISHING PERMIT APPLICATION PROCEDURES; ESTABLISHING REQUIREMENTS FOR VEHICLE STORAGE FACILITIES AND EQUIPMENT; ESTABLISHING ADMINISTRATIVE AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION IN THE NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan, Texas deems it necessary and proper and in the best interests of the health, safety, and general welfare of its citizenry to adopt provisions regulating towing services in the City, all of which are related to the goal of increasing safety in the City of Bryan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BRYAN, TEXAS, THAT:

Section 1

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2

That Chapter 126, Article IV, “TOW TRUCK AND VEHICLES STORAGE BUSINESSES” shall be deleted in its entirety and shall be amended to read as follows:

ARTICLE IV: TOW TRUCK & VEHICLE STORAGE BUSINESS REGULATIONS

Sec. 126-154. - 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:

Consent tow shall mean any tow of a 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 vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

Crimes of moral turpitude includes, but is not limited to, murder, voluntary manslaughter, rape, statutory rape, domestic violence, prostitution, fraud and crimes where fraud is an element, all theft offenses, driving while intoxicated, driving while under the influence of drugs, violations of the Texas Controlled

Substances Act (V.T.C.A., Health and Safety Code Ch. 481), a felony or other offense which adversely affects the applicants ability to provide safe and reliable service.

Incident management tow shall mean any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene. (Occupations Code, Title 14, Chapter 2308, Section 2308.002 (5-a), as amended.)

Nonconsent tow shall mean any tow of a motor vehicle that is not a consent tow, including;

- (A) An incident management tow; and
- (B) A private property tow.

(Occupations Code, Title 14, Chapter 2308, Section 2308.002 (6), as amended.)

Parking facility shall mean any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. The term includes a restricted space on a portion of an otherwise unrestricted parking facility, a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owner's association, or government-owned property leased to a private person.

Parking facility owner shall mean an owner or operator of a parking facility, including any lessee, employee, or agent of an owner or operator.

Person shall mean an individual, a corporation, organization, business trust, estate, trust, partnership, joint venture, association, or other legal entity.

Private property tow shall mean a tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle. (Occupations Code, Title 14, Chapter 2308, Section 2308.002 (8-a), as amended.)

Stand by time shall mean the time period between the time of arrival at the scene of a tow truck dispatched on a nonconsent rotation tow until the time the police officer at the scene permits the tow truck to commence tow activities.

Tow away shall mean a tow that is conducted from a parking facility and without the consent of the owner or operator of that vehicle, but with the parking facility's authorization.

Tow business shall mean the business of towing or removing vehicles compensation, or the expectation of compensation, regardless of whether the purpose of the towing is to remove, repair, wreck, store, trade, or purchase vehicles.

Tow company shall mean an individual, corporation, partnership, or other legal entity engaged in the tow business and includes the owner, operator, employee or agent of the tow company, but does not include a political subdivision of the state. For the purposes of this article, each such legal entity is considered a separate tow company.

Tow rotation list shall mean a list prepared and maintained by the city police department of tow companies which have requested and qualified to appear thereon.

Tow truck shall mean a vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another vehicle.

Tow truck license shall mean the certification of registration issued to a tow company by the Texas Department of Licensing and Regulation listing all tow trucks licensed to operate for that tow company within the state.

Unauthorized vehicle shall mean any vehicle parked, stored, or located in or on a parking facility without the consent of the parking facility owner.

Vehicle shall mean a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer, but does not include a device moved by human power or used exclusively on a stationary rail or track.

Vehicle storage facility (VSF) shall mean a garage, parking lot, or any facility owned or operated by a person other than a governmental entity for storing or parking ten or more vehicles. Ten or more vehicles shall mean the capacity to park or store ten or more vehicles per year.

Vehicle storage facility license shall mean the license issued by the Texas Department of Licensing and Regulation authorizing a business to store vehicles.

Sec. 126-155 – Authority to enforce the provisions of this chapter.

The chief of police, or his designee, is hereby authorized to establish rules and regulations to enforce the provisions of this chapter.

Sec. 126-156. - Permit required to engage in nonconsent tows; required facilities and equipment, application; issuance.

(a) No towing company shall engage in nonconsent tows upon any street without obtaining a permit from the city as authorized by this Article.

(b) To be eligible for a permit to engage in nonconsent tows, the following items must be complied with:

(1) Payment of a permit fee of \$200.00 per company to be used for nonconsent tows.

(2) Approval of Driver/VSF Employee Application and Payment of a license fee of \$15.00 per tow truck operator and VSF employee. This fee is also required for operator/employees who change companies and need to be re-licensed or for a replacement license issued by the city in accordance with Subchapter E, Chapter 2308, V.T.C.A., Occupations Code § 2308.201d. Employee permits will be accepted any time of the year. It is the responsibility of the tow company to notify of employees terminated within 48 hours so that their permit may be withdrawn. Failure to notify of terminations could result in suspension.

(3) Maintenance or ownership of an exclusively and independently operated vehicle storage facility located within 8 miles of the city limits in compliance with provisions of city ordinances. Maintenance of all licenses and permits required by the state commission of licensing and regulations regarding operation of a towing business and vehicle storage facility. Proof of licensing and permitting of all employees of the towing business shall be provided with the application required under this article for permitting of city rotation tow trucks. All operators of tow trucks on city rotation must have incident management licenses issued by the state commission of licensing and regulations. In addition, all personnel working at a vehicle storage facility must be licensed by the state commission of licensing and regulations as required.

- (4) Maintenance of a minimum of one certified tow truck per permitted company for nonconsent tows. The chief of police or his designee will approve a rotation list for the benefit of the police department and the city.
 - (5) Maintenance of tow trucks in compliance with the minimum requirements of the state commission of licensing and regulations, with a lifting capacity of at least 8,000 pounds and a weight of at least one ton, with power assisted booster brakes.
 - (6) Maintenance of insurance coverage, including but not limited to garage keeper's legal liability insurance as required by the Texas Department of Licensing and Regulation. Proof of coverage for each licensed driver by the company.
 - (7) Towing companies shall also maintain on-hook cargo insurance for each tow truck in the amount required by the Texas Department of Licensing and Regulation. Each policy shall contain an endorsement providing for ten days notice to the city in the event of change thereof or cancellation.
 - (8) Completion of an application as delineated by the chief of police or his designee.
 - (9) Execution of the following hold harmless agreement as required in the tow truck application on behalf of the city: "The towing company covenants and agrees to, and by these presents does hereby fully indemnify, hold harmless, and defend the City of Bryan, its officers, agents, and employees from and against any and all claims, suits, or causes of action of any nature whatsoever, whether real or asserted, brought for or on account of any injuries or damages to persons or property, including death, arising out of or incident to the operation of its towing service and all other of its operations arising under or otherwise incident to the towing or storage of motor vehicles."
- (c) Permits shall be for a period of one year, effective February 1. The deadline for the yearly application process shall be December 1 of the year immediately preceding the year of the effective date of the permit. When the yearly application process closes, new applications will not be accepted until the following December. For the year 2014 only, the deadline for the application process shall be March 1, 2014, and the effective date of the permit shall be March 15, 2014.
- (d) Permits are issued by the chief of police, or his/her designee, after receiving the permit fee and after a showing of compliance by the applicant with all the prerequisites under the law.
- (e) No more than one permit shall be issued to any towing company or association consisting of multiple towing companies. (Only one towing company per vehicle storage facility shall be allowed.) In determining whether a towing company is considered to be included within an association of multiple towing companies, among the factors which may be considered are: telephone numbers used by the business, office location, storage lot location, articles of incorporation, partnership agreements, tax records and other records suggesting common ownership interests. These factors are by way of example and should not be construed to limit the city's inquiry. This section does not impede the city's right not to issue a permit to any towing company.
- (f) Any towing company issued a permit under this chapter shall permit inspection of its vehicle storage facility at any time deemed necessary by the chief of police. Failure to permit inspection within two hours of a request by the chief of police or his designee shall be deemed grounds for permit revocation.
- (g) All drivers of tow truck vehicles shall possess a current driver's license and applicable TDLR Licenses and shall not have been convicted of a felony offense or a crime of moral turpitude within the

past 10 years. Tow truck drivers driver's license history will be considered in issuing a permit. All VSF Employees that release vehicles shall possess a current TDLR VSF License and shall not have been convicted of a felony offense or a crime of moral turpitude within the past 10 years.

Sec. 126-157. - Vehicle storage facility.

City permitted towing companies shall each provide a single, suitable place for storage of vehicles towed at the request of the police department [or other authorized city department] and such place shall:

- (1) Be located within 8 miles of the City of Bryan;
- (2) Be properly zoned;
- (3) Have a gate which is kept locked and secured when unattended;
- (4) Maintain all fencing and structures in good condition and in compliance with applicable state laws and city ordinance;
- (5) The facility must comply with all regulations, ordinances, and applicable state laws regarding the operation of a towing services company;
- (6) The facility must comply with all regulations, ordinances, and applicable state laws regarding business construction within the City of Bryan.
- (7) The participating vehicle storage facilities permit holder is responsible for the actions of their tow truck drivers and employees or anyone acting on behalf of the company.

Sec. 126-158. - Vehicle nonconsent tow permit application.

Application for a vehicle nonconsent tow permit shall be made to City of Bryan chief of police or his/her designee on forms furnished for that purpose and will not be considered until completed with all required documentation and fees. Renewal applications shall require the same documentation.

- (1) The application must be signed by the person who owns, controls or operates the proposed vehicle tow service. Applicants shall submit proof of company ownership of the tow truck(s) or evidence of a lease under which the tow truck is to be operated. Applicants shall provide the city a copy of:
 - a. Assumed name certificate where applicable;
 - b. Partnership agreement disclosing the names of all general or limited partners if a partnership; or
 - c. A copy of the articles of incorporation and a certificate from the corporate secretary setting forth names of all officers, directors and persons owning ten (10) percent or more of the outstanding stock of the corporation;
 - d. A valid vehicle storage facility license registered in applicant's name.
- (2) The application must be completed in its entirety and include the following:
 - a. The name, address and telephone number of the applicant, the trade name under which the applicant does business, the street address and telephone number of the vehicle tow service establishment. Applicants must possess their own vehicle storage facility (VSF) within Brazos

County;

b. The number and types of vehicles to be operated, including the year, make, model, vehicle identification number and state license plate number and the type of winch to be operated on each wrecker rated under twenty-six thousand (26,000) pounds. For a heavy-duty permit, tow truck must meet definition of heavy-duty;

c. Proof of an insurance policy or policies which will be in full force and effect for the duration of the permit and will meet the policy requirements outlined by the state in the Vehicle Storage Facility Act, this chapter and applicable state law; Proof of coverage of each driver listed in the application.

d. A statement attesting that each wrecker used by the vehicle tow service has been rendered for ad valorem taxation in the city and that the applicant is current on payment of those taxes;

e. A statement attesting that the person who owns, controls or operates the proposed vehicle tow service has not been convicted of a felony offense or crime of moral turpitude within the past 10 years.

f. A list of each employee who is licensed by the Texas Department of Licensing and Regulation. A permit application for each employee required to be licensed by the Texas Department of Licensing and Regulation should be included.

g. Any other information deemed necessary by the department consistent with and for the proper administration and enforcement of the provisions of this article;

h. An indemnification and hold harmless agreement provided by the city;

(3) To be eligible to receive a nonconsent permit, a tow company shall certify in writing that the VSF meets or exceeds the criteria set forth on an ADA accessibility form, a copy of which will be provided by the city at the time the company applies for a permit.

Sec. 126-159. - Tow truck operators to comply with traffic regulations.

Unless directed otherwise by a police officer a tow truck operator shall adhere to all traffic regulations.

Sec. 126-160. - Police inspection.

Any tow truck performing nonconsent tows within the city limits of the city may be inspected by an official of the city police department at any time the tow truck is being operated on the public streets as a tow truck. Such inspections may be conducted to ensure required licenses and compliance with this article and state law. Further, upon the request of the chief of police or his or her designee, a tow company performing nonconsent tows within the city shall produce records from VSF's used for nonconsent tows to ensure compliance with the maximum rates established under this article and other requirements of this article and state law.

Sec. 126-161. - Tow rotation list.

(a) *Qualifications.* The city police department shall establish and maintain a tow rotation list. Each tow company is qualified to be on such list if it applies for and is granted a permit as authorized by this Article, maintains a 24 hour tow service; has one telephone number which is answered 24 hours a day, seven days a week; and uses a VSF that meets or exceeds the Americans With Disabilities Act ("ADA") accessibility criteria established by the United States Department of Justice. Only those tow trucks that

are included on the tow company's tow truck license are authorized to respond to a rotation call. A tow company may not substitute a tow truck from a different tow company to respond.

(b) *License.* Each tow company requesting placement on the tow rotation list must possess a tow truck license that lists each tow truck operated by that tow company.

(c) *Forfeiture of calls.* Failure of any tow truck to respond to the location dispatched by the city within 30 minutes of being called will result in the forfeiture of that call and shall be considered a violation of this article. The first failure shall result in a warning. Upon the third failure in the same calendar year, the wrecker business and its owner and wrecker shall be suspended from the Tow Rotation List.

(d) *Pass.* A pass shall be defined as when the public safety dispatch operator telephones a towing company on the rotation list to perform a nonconsent tow and is unable to contact the towing company or the towing company refuses or declines to accept the telephone call. The towing company shall be entitled to one pass during a calendar month. In the event the towing company passes two or more times during a calendar month, the first occurrence the wrecker company will be suspended for 30 days. The second occurrence the wrecker company will be suspended for the balance of the year. It is not a ground for suspension or removal if the tow company responds promptly to dispatch that it is unable to take the call. The tow company will then return to the end of the rotation list.

(e) *Temporary removal from list.* Should a tow company wish to be removed from the tow rotation list for a specific period of time, the tow company shall notify the city police department dispatch. It shall be the tow company's responsibility to notify dispatch when the tow company wishes to return to the tow rotation list.

(f) *Unneeded calls.* If a tow company is called to respond to a scene by a police officer and subsequently is not needed, that tow company will be placed as "next in line" on the tow rotation list.

(g) The towing company shall not subcontract its rights or obligations with respect to the rotation list, in whole or in part, to any other person or entity.

Sec. 126-162. - Maximum fees to be charged for nonconsent tows.

The maximum fees charged by tow companies performing nonconsent tows shall be set by resolution and shall reflect fair value of towing services. Itemized receipts shall be provided to owners or operators at the time payment of tow related fees are made. Violations of this provision may result in suspension of permit, and criminal penalties against the offender. Towing fees may be reviewed by the city council once annually upon request of a tow company. A towing fee study shall be performed in conjunction with this review.

Sec. 126-163. - Driving tow trucks to scene of collision prohibited.

No tow company shall drive, or cause to be driven, a tow truck to or near the scene of a collision on a street within the city unless such tow company has been called to the scene by the city police department or by a vehicle owner/operator involved in the collision.

Sec. 126-164. - Soliciting towing business on city street prohibited.

No tow company shall solicit in any manner, directly or indirectly, a person owning/operating any vehicle which is wrecked or involved in a traffic accident on a public street. This prohibition applies regardless of whether the solicitation is for the purpose of soliciting the business of towing, repairing, selling, or purchasing such vehicle.

Sec. 126-165. - Impound tows.

Any police officer investigating an accident or offense within the city may order the impoundment of any vehicle involved therein when criminal prosecution may be involved as a result of such event and it is necessary to seize a vehicle, or process a vehicle for evidence, or secure a vehicle to preserve evidence. Charges resulting from impounding vehicles are the responsibility of the City of Bryan and therefore the designated City contracted wrecker company shall be utilized.

Sec. 126-166. - Duties of tow companies performing Incident Management Tows.

(a) It shall be the obligation of all tow companies under this section to operate the tow business in a safe manner, to include but not be limited to the following:

(1) *Taking direction from investigating officer.* Upon arrival at the scene of a collision within the city, tow truck operators shall take directions on when to engage or tow from the police officer investigating the collision.

(2) *Removing debris of collision.* Tow truck operators that engage and tow any vehicle from the scene of a collision within the city shall remove all debris of the collision from the public street. This duty specifically includes the removal of vehicle parts, glass, and other debris. Such debris shall be disposed of in a lawful manner which will keep it out of the gutters, storm sewers, streams, public rights-of-way, or property not belonging to the tow company.

(3) *Disengaging.* A tow truck that removes a vehicle from the original location shall not disengage from the vehicle until the vehicle has been deposited with the appropriate VSF except when the vehicle is released to the owner or operator or when the owner or operator specifies the location of disengagement. This restriction is enacted to prohibit tow trucks from engaging an unauthorized vehicle in a parking facility and moving it to a close location, then returning for another unauthorized vehicle, ultimately towing all the relocated vehicles to a VSF.

(4) *Authorized Winching Fee.* A winching fee may be collected when winching is required to accomplish the tow and is authorized by the officer at the scene.

(b) Tow companies are expected to deliver a vehicle directly to the location within the limits of Brazos County as designated by the owner of the vehicle or the police department provided such vehicle can be legally delivered to such location.

(c) Any towing company that receives a total of three suspensions in a 12-month period shall have its tow rotation privileges terminated immediately. That towing company shall not be eligible to reapply for the tow rotation list for a 24-month period commencing on the date of termination.

(d) Any towing company that believes that they cannot fulfill all of the terms to be on the tow rotation list under this chapter may apply to the chief of police for removal. Under this chapter, the removal from the tow rotation list decision rests with the chief of police.

Sec. 126-167. - Standards of conduct for towing companies and tow truck drivers performing nonconsent tows.

A towing company or tow truck driver under this article shall adhere to the following standards of conduct:

(1) Abide by all reasonable instructions of police officers and EMS personnel and other city officials at the scene of an accident.

- (2) Not engage in price gouging. Price gouging shall consist of charging a fee that is in excess of the prices listed by resolution and ordinance with the police department.
- (3) Respond to accidents within 30 minutes, if the call is accepted.
- (4) Promptly notify the police department if the permit holder cannot respond within 30 minutes.
- (5) Allow tow trucks, vehicle storage facilities and business premises to be inspected as required by provisions of this article.
- (6) Display the city permit sticker on each tow truck.
- (7) Display the city permit for driver, worn in view of the public.
- (8) Towing companies shall have sufficient personnel and equipment to provide services at all times to meet the needs of the police department.
- (9) Use due care in the maintenance of the security of vehicles that are stored.
- (10) Use due care to maintain the tow trucks in optimum operating condition.
- (11) Use due care not to unreasonably interfere with the personnel at the scene of an auto accident and the orderly arrival at the scene of the tow truck called by the police department from the rotation list.
- (12) Use due care to clean the site at the scene of the accident.
- (13) Abide by all the terms as denoted in this article.
- (14) Abide by all state laws and regulations, county and city ordinances and local rules and regulations.
- (15) Upon receiving a complaint from any source claiming damage or loss to a vehicle or its contents towed by a tow truck operator, or vehicle storage facility, the owner shall submit a written report to the chief of police or his designee within 24 hours after receipt of such complaint. Such reports shall contain all facts pertinent to the claim or complaint presented.
- (16) *Drops.* A tow truck that has "connected" a vehicle for towing shall release the vehicle to its owner or operator upon payment of the "drop fee" and will not tow the vehicle, except when the vehicle is being taken into custody by a police officer. A vehicle is "connected" when the vehicle is fully prepared for transport by attachment to a tow truck, lifted in tow position, with tow lights and safety chains attached and, if required, placed on a dolly in a raised position and the only thing remaining is for the tow operator to drive away. A vehicle is not "connected" if the tow truck has merely backed up to the vehicle.

Sec. 126-168. - Grounds for suspension or removal from the Tow Rotation List.

- (a) Any applicant who makes application under this chapter and is permitted by the city and is called by the police department under the terms of this chapter shall be required to respond to any authorized call. Service on the tow rotation list is at will, and the chief of police or his/her designee may suspend or remove the towing company from service at his/her discretion, including for, but not limited to, any of the following reasons:

- (1) Pass by refusing or declining to accept the telephone call. The towing company shall be entitled to one Pass during a calendar month. In the event the towing company passes two or more times during a calendar month, the first occurrence the wrecker company will be suspended from the rotation list for 30 days. The second occurrence the wrecker company will be suspended from the rotation list for the balance of the year. It is not a ground for suspension or removal if the tow company responds promptly to dispatch that it is unable to take the call. The tow company will then return to the end of the rotation list.
- (2) Forfeiture of calls by failing to respond to the location dispatched by the city within 30 minutes of being called. The first failure shall result in a warning. Upon the third failure in the same calendar year, the wrecker business and its owner and wrecker shall be suspended from the Tow Rotation List.
- (3) Causing undue damage to vehicles picked up or any other act of incompetency of operation.
- (4) Intoxication or incompetency of a tow truck operator.
- (5) Failure to maintain required insurance;
- (6) Failure to allow the chief of police or his designee to periodically make safety inspections of the tow truck or tow trucks, the tow truck service facilities, and/or the vehicle storage facility, as required herein.
- (7) The making of any false statement as to a material matter in an application for a permit, or permit renewal, or in a hearing concerning the permit or services required by this chapter.
- (8) Failure to protect vehicles in its care as a result of a tow truck pull and fails to prevent parts, accessories and personal belongings from being removed from the vehicle except as may be necessary to protect such items from theft.
- (9) The chief of police may suspend or revoke an existing permit or disqualify a person from receiving a permit because of a person's arrest or conviction of a crime, felony probation revocation, revocation of parole, revocation of mandatory supervision or driver's license history. The permittee shall be required to notify in writing the chief of police any arrest within five business days of that arrest or release from custody. Failure by the permittee to notify the chief of police may result in suspension or revocation of the permit.
- (10) Allowing an unlicensed/permitted driver/employee to operate a tow truck or release a vehicle at the vehicle storage facility.
- (11) Administrative Penalty imposed by the TDLR. A tow company's application may be denied if an Administrative Penalty has been imposed by the TDLR during the prior year of application. A tow company's application may be suspended for an Administrative Penalty imposed by the TDLR during the current year. Should it become necessary to request the TDLR inspect a VSF due to complaint and the TDLR inspector submit a case to the TDLR Prosecutor's office, the VSF will be suspended pending action by the TDLR.
- (12) Violation of any of the laws of the state, federal or city government; commission of an offense as defined by this article; or violation of any of the terms of this article by a towing company, its agents or employees.
- (13) Collecting or charging any fees in excess of those set out in this chapter.

(14) Service of the towing company is not in the City's best interests.

Sec. 126-169. - Penalties for violations.

Violation of any term of this article by any person, firm or corporation is declared to be a misdemeanor and upon adjudication of guilt, a fine not to exceed five hundred dollars (\$500.00) shall be assessed against such violator. Each continuing day of violation shall be deemed a separate offense for which a separate fine may be assessed. In addition to the criminal penalties imposed for violations of state law or this article, any tow company on the rotation list that violates this article or state law may be subject to sanctions by the chief of police, depending upon the nature of infraction, number of infractions, and other circumstances. The sanctions shall range from written notification of violations with warning to, and including, suspension or removal from the tow rotation list.

Sec. 126-170. - Report of towing of unauthorized vehicle to police dispatcher.

(a) The VSF that receives a vehicle from a tow truck that removed the vehicle from private or public property within the city and on a nonconsent basis, shall notify the police department public safety dispatch office within one hour of receiving the vehicle. The information to be provided in such notification shall include the:

- (1) General description (brand, model, color) of the vehicle towed, including the state and the license plate, if any;
- (2) Tow company name that towed the vehicle;
- (3) Location/address from which the vehicle was towed and reason;
- (4) Date and time the vehicle was removed from the location;
- (5) Date and time the vehicle was accepted at the VSF; and
- (6) Street address and phone number of the VSF where the vehicle is located.

(b) Such reports shall be made by telephone or in person. A VSF must release vehicles during the time the VSF accepts vehicles. If the VSF accepts vehicles on a 24 hour a day basis, it shall release vehicles on the same basis, with one hour notice.

Section 3

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4

That the Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 5

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 6

That it is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

Section 7

That it is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

Section 8

A person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the City of Bryan Code.

Section 9

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in accordance with the provisions of Section 9 of the City Charter, which publication shall be sufficient if it contains the title, penalty, and effective date of this Ordinance.

Section 10

That this ordinance shall go into effect from and after its final passage and publication as required by law. The effective date of this ordinance will be February 7, 2014.

PRESENTED AND GIVEN first reading the 28th day of January, 2014 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 3rd day of February, 2014, by a vote of ____ yeses and ____ noes at a special meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynn Stratta, City Secretary

Jayson P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney