

ORDINANCE 04-05

AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING THE CITY OF COMMERCE CODE OF ORDINANCES OF THE CITY OF COMMERCE, TEXAS BY ADDING A SECTION TITLED TOW TRUCK AND VEHICLE STORAGE REGULATIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:

ARTICLE 1. AMENDMENT.

The Code of Ordinance for the City of Commerce is hereby amended by adding the section titled Tow Truck and Vehicle Storage Regulations.

All wrecker services approved by the Chief of Police and placed on the rotation list shall be subject to and comply with the following requirements:

Sec. 1-1: Definitions.

Consent tow means 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 that involves the vehicle.

Non-consent tow means any tow of a vehicle that is not a consent tow.

Parking facility means 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 restricted 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 governmental-owned property leased to a private person.

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

Stand by time means the time period between the time of the arrival at the scene of a tow truck dispatched on a non-consent rotation tow until the time the police officer at the scene permits the tow truck to commence tow activities.

Tow away means 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 means 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 means 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 means a list prepared and maintained by the city police department of tow companies, which have requested and qualified to appear thereon.

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

Tow truck license means the certification of registration issued to a tow company by the Texas Department of Transportation, listing all tow trucks licensed to operate for that tow company within the state.

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

Vehicle means 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) means a garage, parking lot, or any facility owned or operated by a person other than a governmental entity for storing or parking ten (10) or more vehicles. Ten (10) or more vehicles shall mean the capacity to park or store ten (10) or more vehicles per year.

Vehicle storage facility license means the license issued by the Texas Department of Transportation/Motor Carrier Division authorizing a business to store vehicles.

Sec. 1-2: License required.

It shall be unlawful for any person to engage in the tow business and make non-consent tows in the city unless such person possesses a current, valid tow truck license that lists each tow truck operated by that tow company.

Sec. 1-3: Tow Truck Required.

Each tow company requesting to be placed on the rotation list to impound passenger vehicles or pick-ups for the Commerce Police Department shall have the following equipment: One (1) flatbed rollback wrecker and one (1) hydraulic boom truck with a wheel lift.

Each tow company requesting to be placed on the rotation list to tow large truck tractors shall have the following equipment: One (1) heavy-duty wrecker. The driver of the heavy-duty wrecker must possess a Class A CDL driver license.

Sec. 1-4: Vehicle Storage Facility.

Each tow company performing non-consent tows shall utilize a Texas Department of Transportation licensed Vehicle Storage Facility located within one mile of the City Limits of Commerce or within the extra territorial jurisdiction. All Vehicle Storage Facility's located within the city limits of the city must comply with all City of Commerce Zoning requirements. All Vehicle Storage Facility's storing vehicles towed by the Commerce Police Department shall have adequate indoor parking area, which shall be available for storage of any vehicle at the request of the Commerce Police Department.

Sec. 1-5: Police Inspection.

Any tow truck performing non-consent tows within the city limits of Commerce 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 designee, a tow company performing non-consent tows within the city shall produce records from SF's used for non-consent tows to ensure compliance with the maximum rates established under this article and other requirements of this article and state law.

Sec. 1-6: Tow Rotation List.

- (a) *Qualifications:* The Commerce Police Department shall establish and maintain a tow rotation list. Each tow company is qualified to be on such list if it maintains a twenty-four (24) hour tow service; has one (1) telephone number which is answered twenty-four (24) hours a day, seven (7) days a week; and uses a Vehicle Storage Facility that meets or exceeds the Americans With Disabilities Act ("ADA") accessibility criteria established by the United States Department of Justice. To be eligible to be placed on the tow rotation list, a tow company shall certify in writing that the Vehicle Storage Facility 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 tow company applies for inclusion on the tow rotation list. 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 police department within twenty (20) minutes of being called will result in the forfeiture of that call and shall be considered a violation of this article.

- (d) *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 Commerce 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.
- (e) *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. If a tow truck responds and performs minor service that enables the vehicle to be driven, and for which a small or no fee is charged, that tow company will be placed as "next in line" on the tow rotation list. This situation is considered a "drop fee" incident.
- (f) *Fee for being on tow rotation list:* A tow company desiring to be placed on the tow rotation list shall pay an annual administrative fee of two hundred dollars (\$200.00) to defray the 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.

Sec. 1-7: Maximum fees to be charged for non-consent tows:

The maximum fees charged by tow companies performing non-consent tows shall be set by the tow company and shall reflect fair value of towing services.

Sec. 1-8: 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 Commerce Police Department or by a vehicle owner/operator involved in the collision.

Sec. 1-9: 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. 1-10: Impound tows:

Any police officer investigating an accident or offense within the city may order the impoundment of any vehicle involved therein when, in the judgment of such officer, criminal prosecution will be involved as a result of such event, or when it is necessary to impound such vehicle to secure evidence, or when the owner or occupant of the vehicle is unable or fails to have such vehicle removed.

Sec. 1-11: Duties of tow companies:

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 Vehicle Storage Facility 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 Vehicle Storage Facility.
4. *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" if it is at least partially attached to the tow truck or when skates/dollies have been placed under the vehicle. A vehicle is not "connected" if the tow truck has merely backed up to the vehicle.

Sec. 1-12: Administrative penalties for violations:

In addition to the criminal penalties imposed for violations of state law or this article, any tow company on the tow 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 violation with warning to, and including, removal from the tow rotation list.

Sec. 1-13: Report of towing of unauthorized vehicle to police dispatcher:

The Vehicle Storage Facility that receives a vehicle from a tow truck that removed the vehicle from private or public property within city and on a non-consent basis shall notify the City of Commerce Police Department Dispatch office within one (1) hour of receiving the vehicle. The information to be provided in such notification shall include:

1. The general description (brand, model, color) of the vehicle towed, including the state and license plate, if any;
2. The tow company name that towed the vehicle.
3. The location/address from which the vehicle was towed and reason.
4. The date and time the vehicle was removed from the location.
5. The date and time the vehicle was accepted at the Vehicle Storage Facility.

6. The street address and phone number of the Vehicle Storage Facility where the vehicle is located.

Such reports shall be made by telephone or in person. A Vehicle Storage Facility must release vehicles during the time the Vehicle Storage Facility accepts vehicles. If the Vehicle Storage Facility accepts vehicles on a twenty-four (24) hour a day basis, it shall release vehicles on the same basis, with one (1) hour notice.

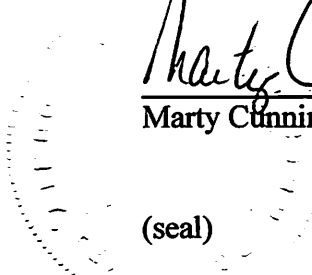
SECTION 2. All ordinances and parts of ordinances inconsistent with or in conflict with the provisions of this Ordinance shall be and the same are hereby expressly repealed.

SECTION 3. If any section, subsection, word, sentence, or phrase of this ordinance is declared to be invalid it shall not affect the validity of this ordinance.

PASSED AND APPROVED on the **FIRST READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 20th day of April 2004.

PASSED AND APPROVED on the **SECOND READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 4th day of May 2004.

ATTEST:

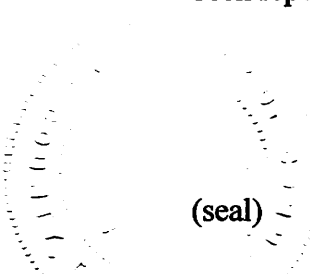

Marty Cunningham
Marty Cunningham, City Secretary

(seal)

CITY OF COMMERCE:

Sheryl Zelhart
Sheryl Zelhart, Mayor

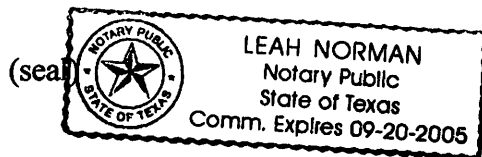
I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an ordinance, and that the same has not been repealed and is in full force and effect.


Marty Cunningham
Marty Cunningham, City Secretary

(seal)

Sworn to and subscribed before me, on this the 7 day of May
2004 to certify which witness my hand and seal of office.

Leah Norman
Notary Public, State of Texas



cityordinance/TowTruckOrdinance.042004