

ORDINANCE NO. 49-886

AN ORDINANCE AMENDING SECTIONS 3.49.030, 3.49.100, 3.49.110, 3.49.130 AND 3.49.140 AND CREATING SECTIONS 3.49.215, 3.49.220, 3.49.225, 3.49.230, 3.49.235, 3.49.240, 3.49.245, 3.49.250, 3.49.255, 3.49.260, 3.49.265 AND 3.49.270 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.49.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“License—Application—Fees—Renewal.**

(a) A person desiring to engage in emergency wrecker service in the City shall file with the City Treasurer a written application upon a form provided for that purpose, which must be signed by the applicant or the applicant’s authorized agent. The following information is required in the application:

- (1) Business name, address and telephone number of the emergency wrecker company;
- (2) Number and types of wreckers to be operated;
- (3) Vehicle identification number of each wrecker;
- (4) The location of the facilities to be owned or leased by the applicant for the purpose of operating the emergency wrecker service;
- (5) The name, address and telephone number of the owner of the emergency wrecker company;

- (6) An agreement that the applicant will participate in the wrecker rotation list;
- (7) Proof that the applicant has secured the payment of compensation to the applicant's employees as set forth in K.S.A. 44-532(b) and amendments thereto;
- (8) A maximum fee schedule for standard towing, heavy duty towing, specialized towing storage, mileage, and all other fees including fuel surcharges and any additional administrative fees.
- (9) A copy of the wrecker service's certificate of public service from the Kansas Corporation Commission.
- (10) A list of all personnel who are employed by the licensee and will, at any time, be required to operate an emergency wrecker. The licensee shall provide the employee's name, date of birth, driver's license number and class of issued driver's license. Drivers are to be employees of the licensee. Independent contractors are not allowed to operate an emergency wrecker vehicle or tow vehicles pursuant to this Chapter.
- (11) A certification, pursuant to Section 3.02.010 of the Code of the City of Wichita, by the applicant that he or she does not owe any personal property taxes, motor vehicle taxes, or real estate taxes to Sedgwick County, Kansas which are delinquent for any real or personal property utilized for the business or storage of vehicles as

part of an emergency wrecker company. No license shall be issued to a person owing delinquent taxes or certifying a false statement.

- (b) A fee of \$50.00 for processing the initial application or any renewals thereof must be submitted with the application; this fee accompanying the applicant shall not be refundable.
- (c) Every license issued pursuant to this Chapter shall terminate at the expiration of twelve months from the date of issuance, unless sooner revoked, and must be renewed before operation of an emergency wrecker service is allowed to continue. Anyone desiring to renew a license shall follow the procedures in subsection (a) of this Section for an initial application.
- (d) Failure to submit a schedule of fees with the annual application will result in utilizing the last schedule of fees submitted by the licensee.”

SECTION 2. Section. 3.49.100 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“Powers and duties of Chief of Police.**

In addition to the powers and duties prescribed elsewhere in this Chapter, the Chief of Police is authorized to:

- (a) Enforce all provisions of this Chapter;
- (b) Adopts rules and regulations, after reasonable notice to the licensees, not inconsistent with the provisions of this Chapter, with respect to the investigation of applicants and other matters incidental or appropriate to his powers and duties as may be necessary for the proper enforcement of the provisions of this Chapter;

- (c) Conduct, when appropriate, periodic investigations of emergency wrecker companies throughout the City;
- (d) Keep records of service adequacy and responsiveness of licensees and provide these records to the City Treasurer upon request;
- (e) Ensure that wrecker fee schedules are accessible to the public by posting the schedule on the police and/or City website, having the fee schedule available for review upon request of officers and citizens at accident scenes and posted at Wichita Police Department substations.”

SECTION 3. Section. 3.49.110 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“Emergency wrecker dispatched service call procedures.**

- (a) The Chief of Police shall establish a list consisting of emergency wrecker companies licensed under this Chapter.
- (b) The wrecker list shall contain the name, address, phone number and towing rates for each emergency wrecker company licensed by the City of Wichita.
- (c) The emergency wrecker service list, including the tow fees charged by each company, shall be posted on the City’s website and be made readily available to all law enforcement officers and to the owners or persons in charge of wrecked or disabled vehicles upon request.
- (d) If the owner or person in charge of the vehicle chooses a specific wrecker service, this choice will be relayed to SPIDER by the law enforcement officer so that a dispatched service call may be made.

- (e) When an emergency wrecker is needed, the need will be immediately made known to the dispatcher for Special Police Information Data Entry and Retrieval Unit (SPIDER). On receiving the first communication, the dispatcher at the SPIDER unit must call the emergency wrecker company chosen by the owner or person in charge of such vehicle, if so designated. If the driver or person in charge of the vehicle fails to designate or choose an Emergency Wrecker Service, or the Emergency Wrecker Service chosen is not available for dispatch, the SPIDER dispatcher will contact the next Emergency Wrecker Service on the rotation list. If two vehicles are to be towed, the Emergency Wrecker Service will be requested to dispatch either a wrecker capable of handling two vehicles or two wreckers. In the event the first company called has no wreckers available, then the dispatcher at the SPIDER unit shall call the company which appears next on the list or, in the event the first wrecker service company called fails or is unable to respond within 45 minutes under nominal conditions, then the dispatcher shall call the next wrecker company appearing on the list. A call to a specific location for a single accident shall be considered as one call and only one company will be called; provided, however, that if necessary, additional companies may be called.”

SECTION 4. Section 3.49.130 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“Fees for emergency wrecker service.**

- (a) Only emergency wrecker companies licensed by the City of Wichita shall be subject to these regulations governing fees to be charged by emergency wrecker services.
- (b) A wrecker service shall submit a schedule of towing fees with the annual application for licensing.
- (c) Failure to submit fee schedules with the annual application will result in utilizing the last fee schedule submitted.
- (d) Wrecker services companies may not charge rates in excess of those filed with their licensing application for emergency wrecker services.
- (e) No fees, including fuel surcharge or administrative fees, other than those submitted in the licensing application, may be charged by the emergency wrecker company.”

SECTION 5. Section 3.49.140 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **“Requirements and operating procedures for emergency wrecker service.**

An emergency wrecker company licensee shall comply with the following requirements and procedures:

- (a) Maintain 24-hour wrecker service;
- (b) Arrive at the accident or to the place designated by the dispatcher at the Special Police Information Data Entry and Retrieval unit

(SPIDER) within a reasonable time after having been notified to do so, such response time not to exceed 45 minutes;

- (c) Deliver, in every instance, the wrecked or disabled vehicle to its storage facility or other location as directed by the owner or agent of the vehicle;
- (d) When directed by an officer at the scene of an accident, temporarily remove vehicles which are creating a traffic hazard to a side street or other place as may be directed by the officer;
- (e) Report to the City's licensing agent all changes in emergency wreckers and equipment used in the licensee's emergency wrecker service;
- (f) Completely remove from the site of an accident all resulting wreckage, debris, reasonable amounts of automotive fluids which are dropped or spilled, and any and all other reasonable amounts of injurious substances dropped upon the highway from such vehicle including all broken glass, which remains in the street, but excluding truck or vehicle cargoes, before leaving the site. In the event two or more wreckers are called to the same accident, both operators shall be equally responsible for the removal of debris from the right-of-way;
- (g) Not permit the use of a wrecker by another licensee;
- (h) The licensee shall not permit an individual to drive a wrecker unless the individual holds a valid driver's license, a valid operator's certificate as

required by Section 3.49.225, and is a current employee of the licensee. Drivers are to be employees of the licensee. Independent contractors are not allowed to operate an emergency wrecker vehicle or tow vehicles pursuant to this Chapter.

- (i) The licensee and its employees shall not assess or collect fees or charges in excess of those filed with its licensing application;
- (j) The licensee and its employees shall not prohibit or refuse to allow the owner, operator or person in possession of the vehicle, who has proof of title or registration, to have access to any personal property in an impounded vehicle for forty-eight (48) hours after such vehicle has been towed and such personal property shall be released to the owner;
- (k) Have all wreckers clearly and permanently marked with the name and address of the licensee on both doors of the vehicle;
- (l) All wrecker drivers of the licensee shall wear shirts identifying the licensee's company name;
- (m) The licensee shall, upon request by a vehicle owner, disclose the name and address of its insurance carrier;
- (n) Carry in all vehicles owned or leased by the licensee "Wrecker Operator Receipt Books" which shall contain forms that shall be filled out and signed by an authorized public agency at the scene of an impound. The form will authorize the licensee or the licensee's agent or employee to tow the vehicle, will contain a space to be

marked by the authorized public agency indicating whether the vehicle shall be held as evidence in a criminal matter, and will state that the licensee assumes liability for the vehicle being towed along with any and all property contained therein. Such forms shall be subject to prior approval by the City's licensing agent and it shall be the responsibility of the licensee to provide such forms;

- (o) Carry in all vehicles owned or operated by the licensee a copy of the licensee's schedules of fees;
- (p) Shall at all times comply with K.S.A. 8-1103 and amendments thereto;
- (q) The owner of a vehicle towed shall have access to any personal property in such vehicle for 48 hours after such vehicle has been towed and such personal property shall be released to the owner or as otherwise required by state law;
- (r) Shall accept, at no additional fee, credit card, debit card or cash payments for any towing, storage or other fees and costs due from the owner of the vehicle for emergency wrecker service;
- (s) Upon request by any law enforcement officer, or the owner of a vehicle to be towed, the emergency wrecker operator shall provide proof of a valid and unexpired emergency wrecker service operator's certificate issued pursuant to this chapter."

SECTION 6. Section 3.49.215 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **"Operator's certificate required.**

It shall be unlawful for any person to report for and make an emergency wrecker tow unless the operator of the wrecker shall have in their possession an operator's certificate issued under the provisions of this chapter.”

SECTION 7. Section 3.49.220 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Emergency wrecker service operator.**

Any person who owns an emergency wrecker company as defined by this chapter, or any employee of such company who reports for and makes an emergency wrecker tow within the city shall:

- (a) Be 18 years of age or older;
- (b) Be a person of good moral character; and
- (c) Possess an operator's certificate.”

SECTION 8. Section 3.49.225 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Qualifications for emergency wrecker services operator certificate.**

Each applicant for an operator's certificate shall undergo an investigation by the Chief of Police to determine if an operator's certificate will be issued. An operator's certificate shall not be issued to any person who:

- (a) Made false or misleading statements of fact in the application;
- (b) Within five years of the date of application had an operator's certificate revoked;
- (c) Is now registered as a sex offender with any state;
- (d) Within five years preceding the date of the application has been found guilty of, pleaded guilty to, pleaded nolo contendere to or been convicted

of a federal, state or local law of any city for leaving the scene of a motor vehicle accident or driving under the influence of alcohol or drugs, or

- (e) Within five years preceding the date of application has been found guilty of, pleaded guilty to, pleaded nolo contendere to or has been convicted of a felony.”

SECTION 9. Section 3.49.230 of the Code of the City of Wichita, Kansas is hereby created to read as follows: “**Application for emergency wrecker operator’s certificate.**

- (a) **Filing.** Every person desiring to report for an emergency tow within the city shall file with the City Treasurer a written application for an operator’s certificate.
- (b) **Application form.** The application for an operator’s certificate shall be made upon a printed form to be provided by the City Treasurer and shall request the following information and such other information as may be deemed proper by the City Treasurer:
 1. The name, residential address, telephone number and date of birth of the applicant;
 2. The applicant’s drivers’ license number and state of issuance;
 3. The number of times, dates and places within the preceding five years the applicant has been arrested or convicted for traffic violations, driving under the influence of alcohol or drugs and/or leaving the scene of an accident;
 4. Whether the applicant has been convicted of a felony within the preceding five years;

5. Whether the applicant is required to register as a sex offender with any state;
6. The business name, address and telephone number of the emergency wrecker company for which the applicant is employed;
7. Verification by a licensed emergency wrecker company that the applicant is a current employee of the licensed company at the time of submission of the application.”

SECTION 10. Section 3.49.235 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Investigation.**

After a complete and fully executed application for an operator’s certificate has been filed with the City Treasurer, the Chief of Police shall cause the application to be investigated.”

SECTION 11. Section 3.49.240 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Fee.**

The operator’s certificate shall not be issued or renewed until the fee for such certificate shall have been paid. A fee of \$50.00 shall be assessed by the City Treasurer. A non-refundable fee of \$25.00 will be assessed to the applicant to defray the cost of investigation and the application process.”

SECTION 12. Section 3.49.245 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Granting or denial; appeals.**

- (a) After completing the investigation, the Chief of Police shall determine whether an operator’s certificate shall be granted to the applicant.

- (b) The Chief of Police’s grant or denial of an application for an operator’s certificate or the renewal thereof shall be based on information provided in the application as well as the results of the background investigation. In addition to the qualifications set for in this chapter, the Chief of Police shall consider any cause that may exist for suspension or revocation of a certificate as set forth in this Code in the determination of the renewal of an operator’s certificate. Within ten days after issuance of notice by the Chief of Police of the denial of any application, the applicant may submit a written request for a hearing before the City Council regarding the Chief of Police’s denial.”

SECTION 13. Section 3.49.250 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Expiration and Transferability of Certificate.**

- (a) All operators’ certificates shall be valid for two years from the date of issuance.
- (b) No certificate issued under the provisions of this chapter shall be transferable from one individual to another; or by an individual from employment by one emergency wrecker service company to employment with another emergency wrecker service company;
- (c) An individual may hold multiple permits allowing such individual to be employed by more than one emergency wrecker service company, however, no additional permit will be issued without written authorization from all emergency wrecker service companies with which the individual

is or seeks to be permitted. The fee for an additional permit shall be as set forth in Section 3.49.240.”

SECTION 14. Section 3.49.255 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Renewal.**

An operator’s certificate may be renewed by the City Treasurer in accordance with the requirements of Section 3.49.230 upon a written application on a form provided by the City Treasurer.”

SECTION 15. Section 3.49.260 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Certificate.**

An appropriate certificate shall be furnished to each operator by the City Treasurer, showing their name, name of licensed emergency wrecker service company, license number and the years for which the certificate is valid. Every emergency wrecker services operator, while on duty, shall have the certificate in their possession at all times.”

SECTION 16. Section 3.49.265 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Suspension or revocation of certificate.**

- (a) Any false statement or misrepresentation of a material fact, made by an applicant for the purpose of securing an operator’s certificate, or any renewal thereof, shall be deemed good and sufficient cause for refusal to grant, or, if granted, for revocation or suspension of a certificate.”
- (b) Every holder of an operator’s certificate issued under this code shall comply with all city, state and federal laws. Failure to do so will justify suspension or revocation of the certificate by the Chief of Police.

- (c) An operator's certificate may be suspended or revoked at any time the certificate holder becomes ineligible to hold the certificate pursuant to the requirements set forth in this chapter or for a violation of the requirements of this Chapter which are applicable to emergency wrecker service operators.
- (d) The Chief of Police shall provide written notice of the intent to revoke, suspend or deny an operator's certificate by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the certificate. Such notice shall detail the reasons or basis for the revocation, denial, or suspension of the certificate. No revocation or suspension shall be imposed on less than five days' notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension."

SECTION 17. Section 3.49.270 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **"Appeal procedure.**

- (a) Any applicant or licensee aggrieved by the denial, suspension, modification, revocation or imposition of additional conditions, of an operator's certificate may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Chief of Police or his/her designee. The Notice of Appeal shall specify:

1. The name and address of the appellant;
 2. The date of application;
 3. The date of the denial, suspension, modification, revocation or imposition of additional conditions of the operator's certificate;
 4. the factual basis for the appeal.
- (b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension, modification or revocation of the certificate until the matter is heard by the City Council.
- (c) The City Council may approve the denial, suspension, modification, revocation, or imposition of additional conditions, overrule the denial, suspension, modification, revocation or imposition of additional conditions or modify the decision of the Chief of Police.
- (d) In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation of the provisions of Section 3.30.090 of the Code of the City of Wichita.
- (e) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the operator's certificate by the City Council."

SECTION 18. Section 3.49.275 of the Code of the City of Wichita, Kansas is hereby created to read as follows: **“Penalty for violation.**

Every person who is convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500, or by six months’ imprisonment, or by both such fine and imprisonment.”

SECTION 19. The originals of Sections 3.49.030, 3.49.100, 3.49.110, 3.49.130 and 3.49.140 are hereby repealed.

SECTION 20. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective on January 1, 2015, upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 25th day of November, 2014.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Sharon L. Dickgrafe
Interim Director of Law and City Attorney