

ORDINANCE NO. 49-207

AN ORDINANCE AMENDING SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.130, 3.49.140, AND 3.49.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, CREATING SECTION 3.49.125 OF THE CODE OF THE CITY OF WICHITA, KANAS, ALL PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINALS OF SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230.

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

SECTION 1. Section 3.49.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Definitions.** Unless otherwise specified in this Chapter, the following terms, as used in this Chapter, mean as follows:

‘Accident’ means any occurrence which renders a vehicle wrecked or disabled as defined in this Section.

‘Authorized public agency’ means an officer of the police department, the Sedgwick County Sheriff's Office, the Kansas Highway Patrol, an employee for the Sedgwick County or City Fire Department or a dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the police department.

‘Chief of Police’ means the Chief of Police for the City of Wichita and his or her designee.

‘Dispatched service call’ means an occasion when the dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the Wichita Police Department calls licensed emergency wrecker at the request of the owner or person in charge of a wrecked or disabled vehicle or at the request of a law enforcement officer to remove a vehicle because it is wrecked or disabled.

‘Emergency wrecker company’ means a person who owns, controls, or has a financial interest in an emergency wrecker service.

‘Emergency wrecker service’ means the business of towing wrecked vehicles from the streets of the City upon request of an authorized public agency.

‘Heavy Tow’ means the towing of any vehicle with a Gross Vehicle Weight greater than 5000 pounds and that is on a roadway, level shoulder, or other level surface that can be accessed with a tow truck.

"Impounded vehicle" means any wrecked or disabled vehicle or any other vehicle which has been towed by order of an authorized public agency and which is not to be released except by authority of an authorized public agency.

‘Licensee’ means a person licensed to engage in emergency wrecker service.

‘Motor vehicle’ means every vehicle which is self-propelled, and which has a vehicle identification number.

‘Owner’ means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of a vehicle.

‘Street’ means any street, alley, avenue, lane, public place, square or highway within the corporate limits of the City.

‘Specialized Tow’ means any tow which requires the uprighting of a vehicle, winching over 30 thirty feet or the removal of a submerged vehicle from a body of water.

‘Standard Tow’ means the towing of any vehicle with a Gross Vehicle Weight less than 5000 pounds and that is on a roadway, level shoulder, or other level surface that can be accessed with a tow truck.

‘Vehicle’ means every device in, upon or by which any person or property is or may be transported or drawn upon a street, which has a vehicle identification number, except devices moved by human power or used exclusively upon stationary rails or tracks.

‘Vehicle Identification Number’ means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or Kansas Highway Patrol or in accordance with the laws of another state or county.

‘Wrecker contractor’ means the Emergency Wrecker service company or companies who have been awarded a contract by the City of Wichita, after a competitive selection process, for the impounding of motor vehicles by the Wichita Police Department.

‘Wrecked vehicle’ means any vehicle that has been damaged as the result of colliding with another vehicle or object so as to reasonably necessitate that such vehicle be removed by a wrecker.

‘Wrecker’ means any motor vehicle designed to be used primarily for removing wrecked or disabled vehicles upon any street.

‘Wrecker rotation list’ means a list of wrecker companies licensed on or before March 1<sup>st</sup> of each year, maintained by the Chief of Police, as provided for in this Chapter. Such term shall include all wrecker companies properly licensed within ninety days of the passage of this ordinance.”

SECTION 2. Section 3.49.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“~~License—Required—Nontransferable—Expiration date—Location.~~**

No persons may engage in emergency wrecker service inside the City without first obtaining an emergency wrecker company license from the City. Only one license may be issued to each emergency wrecker company. A license is not assignable or transferable. Emergency wrecker company licenses shall be for a twelve-month period. Such licenses shall be renewed annually on March 1<sup>st</sup> of each year. The license issued to an emergency wrecker company authorizes the licensee and all its bona fide employees to engage in emergency wrecker service. Any person engaging in emergency wrecker services inside the City shall operate from a single location inside the City.”

SECTION 3. 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's 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 and mileage.

(9) A copy of the wrecker service's certificate of public service from the Kansas Corporation Commission.

(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 fees with the annual application will result in utilizing the last schedule of fees submitted by the licensee.”

SECTION 4. Section 3.49.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“License—Issuance—Storage facilities.**

The City Treasurer shall, after approval from the Chief of Police, issue a license to participate in the emergency wrecker service to applicants complying with the provisions of this Chapter and shall issue an emergency wrecker license. No license authorizing emergency wrecker service shall be issued unless the following requirements are met:

(a) Vehicles. Each applicant, in order to secure a license under this Chapter, must own and/or lease the following vehicles in the following numbers and be equipped as follows:

(1) Three wreckers; each shall be not less than 16,500 gross vehicle weight (GVW) and, shall be equipped with a power-operated winch line and boom with a factory-rated lifting capacity of not less than 5,000 pounds, single line capacity, shall carry as standard equipment a two-way radio or mobile or cellular phone, dolly, cycle sling or trailer,

tow bar, safety chains, fire extinguisher, wrecking bar, broom and shovel, and shall be clearly and permanently marked with the name and address of the licensee on each side of the vehicle;

(b) Storage Facilities. Each applicant, in order to be licensed under this Chapter, must own and/or lease facilities for the storage of vehicles having the following space and equipment requirements:

(1) Storage. Vehicle storage space must be provided at a location which is within the corporate limits of the City and in compliance with applicable zoning ordinances. Such space must have a capacity for storing at least 15,000 square feet. This storage space must be fenced and secured from unauthorized entry. This space must also be kept accessible to vehicles, in conformance with all health and zoning ordinances and lighted in accordance with the requirements of the police department. This storage space must be available for receiving towed vehicles on a 24-hour, seven-day-per-week basis, however, the licensee shall not be required to release vehicles from the storage area between the hours of 7:00 p.m. and 7:00 a.m.;

(c) In order to be licensed under this Chapter, each licensee shall maintain and pay the premiums for the following insurance policy or policies:

(1) Public liability insurance indemnifying the public generally against damages arising out of the operation of emergency wrecker service. The licensee shall be responsible for entering the City on such policy or policies of insurance as a named insured. Such policy or policies

of insurance shall be in an amount of at least \$500,000.00 for one person \$500,000.00 for one accident and \$500,000.00 property damage and a minimum aggregate limit of \$1,000,000.00. This coverage can be provided as a combined single limit. In the insurance certificate, the insurance company must state that the City will be given written notice if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City clerk;

(2) Garage keeper's minimum liability policy covering fire, theft or damage to or loss of property while in tow or otherwise in the care, custody and control of the licensee. The licensee shall be responsible for entering the City on such policy or policies of insurance as a named insured. Such policy or policies of insurance shall be in an amount of at least \$100,000.00 for each individual claim up to a maximum aggregate limit of \$200,000.00 per occurrence. In the insurance certificate, the insurance company must state that the City will be given written notice if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City Clerk.

(c) Each policy required herein shall contain an endorsement providing for ten days written notice to the Chief of Police of the City prior to any material change therein or cancellation thereof.”



SECTION 5. Section 3.49.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“License—Suspension.** (a) The Chief of Police or the City Council, upon five days' written notice to the licensee, shall have the authority to suspend an emergency wrecker company license for a period not to exceed five days for one or more of the following reasons:

(1) Failure of the licensee to maintain such licensee's wrecker or equipment in a good and safe working condition;

(2) Violation by the licensee or an employee of the licensee of a provision of this Chapter;

(3) Violation by an emergency wrecker driver of a provision of the motor vehicle or traffic laws of this state or City while in the scope of his employment in the emergency wrecker service;

(4) Failure of the licensee to comply with the terms and conditions of the City's nondiscrimination and equal opportunity plan;

(5) Failure of the licensee to maintain the required liability and worker's compensation insurance policies as required by this Chapter;

(6) Obtaining the license by fraudulent conduct or false statements;

(7) The wrecker or towing service violated the fee and charge schedule by overcharge;

(8) The wrecker or towing service consistently refuses to respond to requests for service by the police department or consistently

fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;

(9) The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;

(10) The City of Wichita is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause.

(11) The wrecker or towing service fails to have a valid certificate of public service issued from the Kansas Corporation Commission.

(b) A licensee may appeal such an order suspending an emergency wrecking service license to the City Council. Such appeal must be in writing and must be filed with the City Clerk within ten days from the date of such order of suspension. The order of suspension shall be stayed during the pendency of any such appeal.”

SECTION 6. Section 3.49.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“License—Revocation.** (a) The City Council, upon five days' written notice to the licensee, shall have the authority to revoke an emergency wrecker company license for one or more of the following reasons:

(1) The making of a false statement as to a material matter in an application for a license or license renewal;

(2) Failure of the licensee or any employee of the licensee to comply with the fee schedule provided in this Chapter;

(3) Violation of any of the provisions of this Chapter by the licensee or any employee of the licensee;

(4) Suspension of the licensee's emergency wrecker company license three times within a twenty-four-month period;

(5) Failure of the licensee to comply with Section 3.49.230 of this Code and amendments thereto, relating to nondiscrimination.

(b) Any appeal taken from an order of revocation shall suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any other person acting for or on such person's behalf, for a period of six months after the revocation becomes effective.”

SECTION 7. Section 3.49.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Appeal from refusal to issue or renew, suspension or revocation of a license.** (a) If the City Treasurer refuses to issue or renew a license under this Chapter, or the Chief of Police suspends a license under this Chapter, such action is final unless the applicant or licensee, within ten days after the date of the suspension or refusal to renew a license, files a written appeal with the City Council setting forth specific grounds for the appeal. The City Council shall, within 30 days, grant a hearing to consider the action and may sustain, reverse or modify the action appealed.

(b) The City Treasurer may revoke a license as provided in this Chapter, except that no license shall be revoked except by order of the City Council, and only then at a hearing provided for such purposes, and the licensee shall receive at least five days' notice prior to such hearing.”

SECTION 8. 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) Adopt 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 at accident scenes and posted at Wichita Police Department substations.”

SECTION 9. 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) When a law enforcement officer determines that emergency wrecker services are required to remove a wrecked or disabled vehicle, the owner or person in charge of the wrecked or disabled vehicle will be provided the list of licensed wreckers.

(d) The owner or person in charge of the vehicle's choice of wrecker service company 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. In the event the first company called has no wrecker 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 10. Section 3.49.125 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Impounded Vehicles.** (a) When an authorized public agency requests the impounding of an abandoned, wrecked or disabled vehicle, or the vehicle is being impounded pursuant to the provisions of Section 11.97.010 of the Code of the City of Wichita, the dispatcher for Special Police Information Data Entry and Retrieval Unit (SPIDER) will contact the contractor for the City of Wichita.

(b) The maximum allowable fees to be charged by the wrecker contractor for towing and storage charges for vehicles impounded by the City of Wichita shall be set forth by the contract between the City and the contractor. Such fees shall not exceed those set forth in Section 3.49.130.

(c) All vehicles impounded by the City of Wichita shall be subject to the release and notice provisions of Chapter 11.97.

(d) All vehicles impounded shall be sold by public auction. The terms and conditions of the sale of the vehicles and disposition of the auction proceeds shall be set forth in the contract between the City and the contractor.”

SECTION 11. 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 may not charge rates in excess of those filed with their licensing application for emergency wrecker services.

SECTION 12. 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.** (a) An emergency wrecker company licensee shall comply with the following requirements and procedures;

(1) Maintain 24-hour wrecker service;

(2) 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;

(3) 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;

(4) 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;

(5) Report to the City's licensing agent all changes in emergency wreckers and equipment used in the licensee's emergency wrecker service

(6) 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;

(7) Not permit the use of a wrecker by another licensee;

(8) The licensee shall not permit an individual to drive a wrecker unless the individual holds a valid driver's license;



(9) The licensee and its employees shall not assess or collect fees or charges in excess of those filed with its licensing application.

(10) 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 retrieve any medicine, medical supplies or governmental-issued documents regarding identification from an impounded or towed vehicle;

(11) Have all wreckers clearly and permanently marked with the name and address of the licensee on both doors of the vehicle;

(12) All wrecker drivers of the licensee shall wear shirts identifying the licensee's company name;

(13) The licensee shall, upon request by a vehicle owner, disclose the name and address of its insurance carrier;

(14) 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;

(15) Carry in all vehicles owned or operated by the licensee a copy of the licensee's schedules of fees

(16) Shall at all times comply with K.S.A. 8-1103 and amendments thereto;

(17) The owner of a vehicle towed shall have access to personal property in such vehicle for forty-eight (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.

(18) 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.“

SECTION 13. Section 3.49.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Compliance with State Law.** All vehicles impounded and/or towed pursuant to this chapter shall be disposed of, sold and/or released in accordance with the provisions of K.S.A. 8-1101, et seq.”

SECTION 14. The originals of Sections 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 and 3.49.230. of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 15. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of February, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law