

ORDINANCE NO. _____

ENTITLED: “AN ORDINANCE CREATING CHAPTER 5.78, TOWING AND WRECKER RECOVERY OPERATIONS, AMENDING CHAPTER 5.04, SECTION 5.04.030, TYPES OF BUSINESSES, ACTIVITIES AND EVENTS, AND CHAPTER 5.08, SECTION 5.08.270, TOWING (VEHICULAR), OF TITLE 5, BUSINESS LICENSES AND REGULATIONS, AND REPEALING IN ITS ENTIRETY SECTION 10.12.190, TOWING FIRM STANDARDS, OF CHAPTER 10.12, ADMINISTRATION AND ENFORCEMENT, OF TITLE 10, VEHICLES AND TRAFFIC, OF THE CODE OF THE CITY OF CHEYENNE WYOMING.”

WHEREAS, the governing body of the City of Cheyenne acknowledges Police Chief Brian N. Kozak’s staff report of November 3, 2013, detailing various safety and pricing concerns relating to police towing list operations in the City of Cheyenne and containing documentation regarding towing complaints investigated by the Cheyenne Police Department;

WHEREAS, the governing body recognizes that the concerns and complaints raised in the Kozak staff report constitute serious safety and pricing issues affecting the citizens of the City of Cheyenne that must be addressed; and

WHEREAS, the governing body hereby wishes to take legislative action addressing the concerns and complaints described in the preceding paragraphs.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:

Section 1. That Chapter 5.78, Towing and Wrecker Recovery Operations, of Title 5, Business Licenses and Regulations, of the Code of the City of Cheyenne, Wyoming, is hereby created as follows:

**CHAPTER 5.78
TOWING AND WRECKER RECOVERY OPERATIONS**

5.78.010 Purpose – Authority – General provisions.

A. The purpose of this chapter is to license, regulate and establish guidelines for businesses providing motor vehicle towing and wrecker recovery operations offered to the public within the city, including towing and wrecker recovery operators and their drivers.

B. Authority is granted cities and towns by Wyo. Stat. § 15-1-103(a) (xiii) and (xli) to license and regulate businesses for the public health, safety and welfare of the community.

C. In addition to business licensing provisions of this chapter, licenses shall be issued in accordance with Chapter 5.04 and Chapter 5.08, Section 5.08.270, of the city code.

D. Licenses may be suspended or revoked in accordance with Chapter 5.04, Sections 5.04.100 and 5.04.110 of the city code.

E. Every towing and wrecker recovery operator providing services under the provisions of this chapter must abide with the motor vehicle and traffic provisions of Title 10 of the city code and applicable local, state, and federal law.

F. Pursuant to Section 5.78.040 of this chapter, every written request by a business license applicant, or a current licensee, requesting participation on the police department’s towing and wrecker recovery operations rotation list shall be approved by the chief of police, or his or her designee. The chief of police shall have the authority to remove any licensee from participation on the rotation list pursuant to Section 5.78.050 of this chapter.

5.78.020 Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

“Licensee” means any person, as defined in Section 1.04.020 of the city code, granted a license under this chapter to engage in the business of providing motor vehicle towing and wrecker recovery operations to the public within the city.

“Motor vehicle” means a commercial, motor, rental and/or U-Drive-It vehicle, and trailer as defined in Wyo. Stat. Section 31-1-101, and, for purposes of this chapter, includes horse-drawn vehicles.

“Rotation list” means the list compiled and maintained by the police department containing the names of licensees who have been approved by the chief of police, or his or her designee, to be placed on the department’s rotation list, and who will be requested by the police department to respond to the scene of accidents, incidents or emergencies involving motor vehicles and the necessity for towing and wrecker recovery operations.

“Storage area” means the area used by a towing and wrecker recovery operation for the storage of any towed motor vehicles. If the storage area is located within city limits, the area must meet city zoning requirements; in all instances the storage area shall have sufficient outdoor and indoor secure storage to be able to accommodate and secure any and all towed motor vehicles.

“Towing and wrecker recovery operations” (hereinafter “towing/recovery operation” or “towing/recovery operator”) means the business of, or offering the services of, a motor vehicle wrecker or towing service, whereby motor vehicles may be towed or otherwise removed from one place and transported to another by the use of a motorized towing vehicle designed for that purpose.

“Towing rotation list participant” or “participant” means any towing/recovery operation that has a current and valid business license and has been approved by the chief of police, or his or her designee, to be on the rotation list.

“Wyoming driver’s license” or “driving license” means an appropriate driver’s license as required by Wyo. Stat. Section 31-7-109, based on the gross vehicle weight of the towing vehicles being operated, as determined by the chief of police, or his or her designee.

5.78.030 Business license required.

A. A person shall not conduct, maintain, or operate a towing/recovery operation providing services within the city without a valid and current business license issued by the city clerk.

B. Any person desiring to conduct, maintain, or operate a towing/recovery operation within the city must first obtain a business license by submitting to the city clerk an application, together with a non-refundable annual license fee, on forms provided by the city clerk. An application, or annual renewal application, for conducting business as a towing/recovery operation must contain such information and documentation as may be determined by the city clerk and the chief of police including, but not limited to the following:

1. If the applicant is an individual, the name and business address of the applicant; business mailing address and telephone number, and applicant’s date of birth. If the applicant is a partnership or legal entity, the name of business (applicant), principal place of business and business mailing address and telephone number. In addition, the applicant for a partnership or legal entity must provide the names and business or residential addresses of the persons who hold any legal or beneficial interest in the business, and the dates of birth of the persons who hold any legal or beneficial interest in the business

2. Written proof of current State of Wyoming and United States Department of Transportation authorization to operate a towing/recovery operation business, including a copy

of a current and valid vehicle salvage yard storage and disposal facility license as required under Wyo. Stat. Section 31-13-114, evidencing compliance with applicable rules and regulations.

3. Written proof that the applicant has current automobile insurance coverages as defined in and meeting the minimum insurance amounts required by Section 3 of Chapter 3 of the Rules and Regulations promulgated by the Wyoming Department of Transportation.

4. Names and written evidence of appropriate driving license for each towing/recovery driver or operator who will be employed, or who will be providing services, on behalf of the towing/recovery operation business. Any person employed as a driver or operator of a towing/recovery operation must possess a valid driving license.

5. Disclosure of whether the applicant has in the ten (10) year period prior to application ever had a license or application relating to operation of a towing/recovery operation revoked, suspended or denied, and whether the applicant, including any person who holds any legal or beneficial interest in the business (applicant), has ever been convicted of a crime other than a misdemeanor traffic offense.

6. Affirmation that the information contained in and submitted with the application form is complete, true and correct. Each application must be signed by the applicant in the presence of a licensed notary public. The applicant must also sign an authorization, in a form prescribed by the chief of police, which will be sufficient to authorize the chief of police to conduct a background investigation. The chief of police may impose a reasonable fee to recover costs associated with the investigation.

C. Upon receipt of and payment for an application for a business license, the city clerk will forward a copy to the chief of police for a background investigation of the applicant and a recommendation whether to approve or disapprove the application. The city clerk will also forward a copy of the application as applicable for review and recommendation by various city departments. The chief of police may recommend the denial of any application that contains false, misleading or incomplete information, or due to any convictions involving any felony offenses, whether within Wyoming or elsewhere, involving, but not limited to, assault, battery and/or larceny and related offenses.

D. Following issuance of a business license, a licensee must notify the city clerk and chief of police of any change in the data required to be furnished under Section 5.78.030 within ten (10) days after any change occurs.

E. All holders of a business license issued under this chapter shall be required, in any instances when a holder has towed or otherwise removed a motor vehicle from one place and transported to another, when such tow or removal (i) was not requested or otherwise initiated by the police department and (ii) was not requested by the owner of the vehicle, or representative of the owner, to notify the police dispatch center, or any other location specified by the police department, of the tow or removal by telephone call within twenty (20) minutes of performing such tow or removal.

F. All holders of a business license issued under this chapter shall be required by the police department to attend any training session(s) as the police department deems to be necessary and appropriate, including but not limited to Traffic Incident Management System (TIMS) training.

5.78.040 Towing rotation list participation; requirements.

A. No towing/recovery operator shall be included on the rotation list without first having obtained a business license from the city clerk.

B. To be added to or included as a participant on the police department towing rotation list, licensees shall:

1. Submit a copy of a current and valid vehicle salvage yard storage and disposal facility license as required under Wyo. Stat. Section 31-13-114, evidencing compliance with applicable rules and regulations.

2. Possess a vehicle storage area of such size to allow for secure storage of all vehicles towed at the request of the police department. The storage area shall be enclosed by a solid fence or chain link fence at least six (6) feet in height, and lighted in such a manner to maximize safety and security of stored vehicles. Towing/recovery operations must also have an indoor secure facility available to be used at the request of a vehicle owner, the discretion of the towing or wrecker driver, or at the direction of a requesting police officer. Each towing list participant is required to possess its own vehicle storage area meeting the requirements of this paragraph. For the avoidance of doubt, no towing list participant shall share or otherwise utilize in common a vehicle storage area with any other towing/recovery operation.

3. Furnish the city clerk and chief of police with a written request for participation in the towing rotation list. Request may be made upon an applicant's initial business license application or by separate written request if a license has previously been issued. The chief of police, or his or her designee, shall have the authority to approve or deny the request, based upon compliance with city, state and federal law and regulations, within twenty (20) business days after receipt thereof. Notwithstanding the foregoing, the chief of police, or his or her designee, shall approve a request if full compliance with all city, state and federal law and regulations has been demonstrated. Upon approval, the chief of police shall issue the applicant written approval indicating the licensee's approved participation on the rotation list. A copy of the written approval shall be provided to the city clerk, chief of the fire and rescue department and city traffic engineer. The chief of police may suspend or revoke a licensee's participation in the towing rotation list pursuant Section 5.78.050 B. of this chapter.

4. Provide written affirmation that the licensee will:

a. Maintain the following minimum required towing vehicle equipment in good working condition:

- i. Emergency lights
- ii. Remote tail and stop lights
- iii. Fire extinguisher
- iv. Broom, shovel, bucket
- v. Spill absorbing materials
- vi. ANSI safety vest
- vii. Spotlight and flashlight
- viii. Flares and safety triangles
- IX. Webbing and strapping
- X. Towing vehicle

b. Ensure that all towing/recovery drivers/operators are properly trained and knowledgeable in the operation of all equipment. Each licensee is responsible for background checks on individual drivers/operators.

c. Clean up all debris at a response scene, except for hazardous materials as defined by 49 U.S.C. 5103 and 49 C.F.R. 172.101.

d. Provide the police department with a current telephone number or numbers where the towing/recovery operation may be reached on a seven day/twenty-four (24) hour basis.

e. Abide by a fee schedule for towing charges related to calls for service made pursuant to the towing rotation list. The fee schedule shall be proposed by the police department and adopted by the governing body in the form of a resolution. Any amendment to the fee schedule increasing fee limits shall be adopted by the governing body in the form of a resolution. Any variation in charges in excess of the fee schedule requires (i) express written or oral preapproval from an officer or designee of the police department prior to performing the towing services giving rise to the excess charges and (ii) sufficient written and photographic documentation provided to the police department to justify the additional charges. Notwithstanding the foregoing, the chief of police may promulgate additional documentary requirements for any variation in charges in excess of the fee schedule.

f. Follow any reasonable request made by a law enforcement officer or emergency

responder.

g. Immediately accept payment offered and made during normal weekday business hours or ~~normal weekend business hours~~ **DURING THE WEEKEND, PURSUANT TO THIS PARAGRAPH**, of any fee promulgated pursuant to the fee schedule described in subparagraph (e), above, if payment is offered pursuant to the forms described in subparagraph (j), below. For the purposes of this chapter, ~~“normal weekend business hours” shall include at least four consecutive (4) hours on either Saturday or Sunday of a given week~~ **ACCEPTING PAYMENT ON THE WEEKEND, A PARTICIPANT SHALL IMMEDIATELY ACCEPT PAYMENT OFFERED EITHER (I) IN PERSON, IF THE PARTICIPANT HAS WEEKEND BUSINESS HOURS, OR (II) TELEPHONICALLY, AT THE TELEPHONE NUMBER PROVIDED UNDER SUBPARAGRAPH D., ABOVE, IF THE PARTICIPANT DOES NOT HAVE WEEKEND BUSINESS HOURS.** For the avoidance of doubt, the requirement of this subparagraph shall not preclude acceptance of payment made outside of normal weekday business hours, including but not limited to any “gate” fee that may be charged by the licensee.

h. Upon acceptance of payment described in subparagraph (g), above, release the towed vehicle to the vehicle owner, authorized operator, or authorized agent of the owner of the vehicle, the lienholder or agent of the lienholder of the vehicle, or the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the vehicle owner.

i. Release items of personal property during normal weekday or weekend business hours without charge to the lawful owner of the towed vehicle when authorized by the police department. This requirement applies only to personal property items contained within the vehicle towed, but not considered part of the vehicle.

j. Accept cash and at least two major credit cards as form of payment.

k. Not solicit or move wrecked or disabled vehicles for which another towing list participant has been dispatched by the city.

C. All licensees who are towing rotation list participants must abide by the following guidelines regarding calls for service:

1. Towing rotation list participants should respond immediately to calls for service and arrive within 30 minutes of accepting a call for service (45 minutes during inclement weather). If unable to arrive within specified time, operator must notify the Police Department with the estimated time of arrival. Failure to respond within the specified time, or notify the Police Department of the delay shall be cause for the police department to contact the next scheduled operator;

2. Towing rotation list participants shall not transfer or attempt to transfer a call for service to another towing list participant;

3. If a towing rotation list participant fails to answer their telephone when called, or rejects a call for service, it will be considered as a turn on the rotation list and said participant shall rotate to the bottom of the rotation list. When calling towing list participants, phones shall be allowed to ring a minimum of eight (8) times prior to determining that a participant is unavailable;

4. When contacting or attempting by telephone to contact a towing rotation list participant and receiving a busy signal or recording, the police department shall attempt to place the call two times. If no response is received, the effort shall be deemed a no-answer or rejection, and the participant shall rotate to the bottom of the rotation list. The police department shall then call the next participant on the rotation list.

D. Towing rotation list participants must:

1. Immediately contact the chief of police, or his or her designee, when a participant becomes aware that they will be unavailable for any reason, including, but not limited to, planned medical treatment, vacation, etc., so arrangements can be made for coverage for such

time period and disruption of operations is avoided. In the event that the towing rotation list participant is unavailable, the participant shall rotate to the bottom of the rotation list.

2. Respond to tow abandoned vehicles when requested. Refusal to respond to an abandoned vehicle tow will be considered as a turn on the rotation list, and said participants shall rotate to the bottom of the rotation list.

3. Maintain towing and recovery reports affiliated with response to police department calls for services for at least one year from date of response. Included in the report should be vehicle owner name, address, telephone number, fees charged, and to whom the vehicle was released and the date of release. The chief of police, or his or her designee, reserves the right to inspect all participants' reports, records, vehicles, and storage areas for compliance with the provisions of city code and any applicable state and federal laws.

4. Receive clearance by the police department prior to releasing any vehicle that has been classified as a "Police Hold."

5. Assume full fiscal responsibility for all property and/or motor vehicles entrusted to them.

6. Refrain from releasing, within ten (10) hours of time of towing, any vehicle towed or recovered in connection with an incident involving driving under the influence of alcoholic/malt beverages or drugs to the individual who was driving said vehicle at the time of the violation.

5.78.050 Police department towing rotation list procedures; Participant removal from list.

A. Police department procedures involving the towing rotation list will be in accordance with the following:

1. The police department shall maintain a log of all calls or contacts made by the department to towing rotation list participants for response services made in connection with the rotation list.

2. Each towing list participant is only allowed one place on the rotation list, regardless of the number of towing or wrecker vehicles owned.

3. If the party requiring towing or recovery service requests a particular towing/recovery operator, the police department shall call the same. If the requested towing/recovery operator is not available, the next available participant on the rotation list shall be called. Special request calls shall not affect the rotation list or result in the "skipping" of any towing list participant. A towing/recovery operator need not be on the rotation list to be called in the case of a special request, but must still possess a valid business license issued by the city clerk and must abide by the fee schedule described in Section 5.78.040 B.3 of this chapter.

4. If the party requiring towing or recovery service has no preference, the police department shall call the next participant on the rotation list. If the towing/recovery operator is unavailable or cannot otherwise respond after being contacted pursuant to the provisions of this chapter, the next participant on the rotation list shall be called.

5. Should responding police officers or fire fighters determine that an accident or incident has resulted in a life threatening condition, towing/recovery operators may be called out of the rotation list order, should the same be located closer to the emergency where they could respond more expediently than the next participant on the rotation list.

B. The chief of police shall have the authority to remove any participant from the towing recovery rotation list, or penalize any participant under Section 5.78.060 of this chapter, based upon non-compliance or violations of this chapter, other applicable provisions of city code, or state or federal law. The chief of police may also remove a participant from the rotation list upon receipt and investigation of any written complaint submitted to the chief of police from members of the public. The chief of police shall provide written notification to any participant

relative to removal from the list and the accompanying reasons therefore, and will provide the city clerk with a copy of the notification.

5.78.060 Participant violation of towing rotation list requirements and appeal process

A. Upon receipt of a complaint, the chief of police, or his or her designee(s), shall, within ten (10) business days, fully and diligently investigate the violations alleged in the complaint and document the same. The investigating officer shall thereafter contact the towing/recovery operation and obtain the towing/recovery operation's version of the facts and incident in question. After completing the investigation, the investigating official shall produce a report of the investigation and forward it to the chief of police, or his or her designee(s), within ten (10) business days of completion of the investigation.

1. Upon receipt, the chief of police, or his or her designee(s), shall, within ten (10) business days, notify the towing/recovery operation of the investigation result.

B. Violation of rotation list requirements or operations, as set forth in Sections 5.78.040 and 5.78.050 of this chapter, by a towing rotation list participant shall be subject to the following penalties as determined by the chief of police:

1. First violation – Immediate removal from the police department towing rotation list for a six (6) month period.

2. Second violation – Immediate removal from the police department towing rotation list for a twelve (12) month period.

3. Third violation – Immediate and permanent removal from the police department towing rotation list.

C. Upon receipt of the notice, the participant may request a hearing. The request must be in writing and received by the city clerk within seven calendar days of receipt of the notice. Failure on the part of the participant to request a hearing in writing within the specified time period shall be deemed a waiver of the participant's right to request a hearing.

D. If a hearing is requested and received by the city clerk within the specified time period, the city clerk will schedule a hearing before the governing body and notify the participant in writing, by certified mail of the date, time and place of the meeting.

E. At the hearing, the participant and other interested parties may be in attendance to present any information relative to the removal from the City's towing/recovery rotation list. The hearing, deliberations and notification of decision from the governing body will be conducted pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. Sections 16-3-101, *et seq.* The City Clerk will notify the participant in writing, by certified mail, of the governing body decision as the result of the hearing.

5.78.070 Violation – General penalty.

It is unlawful for any person or licensee to violate any of the provisions of this chapter. Persons or licensees violating any provision of this chapter or causing the provisions of this chapter to be in violation will be guilty of a misdemeanor, punishable pursuant to the general penalty provision of the city code.

Section 2. That Chapter 5.04, Business Licenses Generally, Section 5.04.030, Types of businesses, activities and events, of Title 5, Business Licenses and Regulations, of the code of the City of Cheyenne, Wyoming, is hereby amended as follows with wording of Section 5.04.030 not set out below to remain unchanged:

~~Towing firms/businesses (on police rotation list);~~
TOWING AND WRECKER RECOVERY OPERATIONS;

Section 3. That Chapter 5.08, Business License Fees, Section 5.08.270, Towing (Vehicular), of Title 5, Business Licenses and Regulations, of the code of the City of Cheyenne

Wyoming, is hereby amended as follows:

5.08.270 ~~Towing (vehicular).~~ **TOWING AND WRECKER RECOVERY OPERATIONS.**

The license fee for conducting a towing ~~(vehicular)~~ AND WRECKER RECOVERY OPERATIONS business ~~desiring to be on the police department rotation call list~~ will be ninety dollars (\$90.00) annually per location of business. All persons applying for a license must comply with ~~the towing and operators' standards adopted by resolution by the governing body pursuant to Section 10.12.190~~ **THE PROVISIONS SET FORTH IN CHAPTER 5.78 OF CITY CODE.**

Section 4. That Section 10.12.190, Towing firm standards, of Chapter 10.12, Administration and Enforcement, of Title 10, Vehicles and Traffic, of the code of the city of Cheyenne, Wyoming, shall be repealed in its entirety.

Section 5. That this ordinance shall be in full force and effect upon its approval and publication but not sooner than January 1, 2014. All valid and current business licenses issued by the city clerk prior to the effective date of this ordinance shall remain in full force and effect until the next respective license expiration date, however, a current licensee will not be allowed to be a towing rotation list participant until requirements of Section 5.78.030 B.2. and Section 5.78.040 of this ordinance are met. In addition, any current licensee requesting and receiving approval to be on the towing rotation list will be subject to the provisions of Sections 5.78.040, 5.78.050, 5.78.060 and 5.78.070 of this ordinance.

FIRST READING:

SECOND READING:

THIRD AND FINAL READING:

Richard L. Kaysen, Mayor

(SEAL)

ATTEST:

Carol Intlekofer, City Clerk

Publish: Wyoming Tribune-Eagle