No. 515

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF WEST COLUMBIA, TEXAS, BY ADDING ARTICLE VIII ENTITLED "TOWING SERVICES"; REGULATING THE OPERATION OF TOW TRUCK BUSINESSES WITHIN THE CITY OF WEST COLUMBIA; PROVIDING FOR A TOW TRUCK ROTATION LIST AND SELECTION OF TOW TRUCK COMPANIES TO PERFORM NON-CONSENT TOWS WITHIN THE CITY OF WEST COLUMBIA; REQUIRING REGISTRATION AND PERMIT OF ALL TOW TRUCK BUSINESSES AND TOW TRUCKS PERFORMING CONSENT TOWS WITHIN THE CITY IF THE OWNER HAS A PLACE OF BUSINESS WITHIN THE CITY; REQUIRING REGISTRATION AND PERMIT OF ALL TOW TRUCK BUSINESSES AND TOW TRUCKS PERFORMING NON-CONSENT TOWS WITHIN THE CITY; LIMITING TOW TRUCK BUSINESSES AND TOW TRUCKS WHICH MAY PERFORM NON-CONSENT TOWS WITHIN THE CITY TO THOSE WHICH HAVE A PLACE OF BUSINESS EITHER WITHIN THE CITY OR ITS EXTRA-TERRITORIAL JURISDICTION; PROVIDING THAT ANY VIOLATION OF THIS ARTICLE IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT TO EXCEED $200.00, WITH EACH DAYS VIOLATION CONSTITUTING A SEPARATE AND DISTINCT OFFENSE; PROVIDING FOR REMOVAL OR SUSPENSION FROM THE WRECKER ROTATION LIST IN THE EVENT OF A VIOLATION; PROVIDING FOR JOINT AND SEVERAL LIABILITY BY THE OFFICERS, MANAGERS, AGENTS AND EMPLOYEES OF ANY CORPORATION WHICH IS OPERATING A TOW TRUCK WITHIN THE CITY OF WEST COLUMBIA; PROVIDING FOR THE REPEAL OF ALL ORDINANCES, RESOLUTIONS, OR POLICIES OF THE CITY OF WEST COLUMBIA TO THE EXTENT THAT THEY ARE INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

Section One

Chapter 10 of the Code of Ordinances of the City of West Columbia, Texas,

shall be and is hereby amended by the addition of Article VIII entitled TOWING SERVICES as follows:

ARTICLE VIII. TOWING SERVICES

DIVISION 1. GENERALLY

Sec. 10-250. Definitions.

Words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **Consent Tow**: Any tow of a motor 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 motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(2) **Motor Vehicle**: Every vehicle which is self-propelled.

(3) **Nonconsent Tow**: Any tow of a motor vehicle that is not a consent tow.

(4) **Owner**: Any person who holds the legal title of a motor vehicle or who has the legal right of possession thereof, or the legal right of said vehicle.

(5) **Street**: Any street, alley, public place, square or highway within the corporate limits of the City.

(6) **Tow Truck**: A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch or otherwise move another motor vehicle.

(7) **Tow Truck Business**: The business of towing or removing disabled or wrecked vehicles on the public streets, regardless of whether the purpose of the towing is to remove, repair, wreck, store, trade or purchase such disabled or wrecked vehicles, excluding private garage towing for their clients.

(8) **Tow Truck Operator**: Any person, partnership, corporation or other entity engaged in the tow truck business.

(9) **Tow Truck Rotation List**: The rotation list of companies prepared and used as provided in section 10-263.

(10) **Tow Truck Selection Form**: Form for selection of a tow truck company, prepared and used as provided in sections 10-262 and 10-263.

(11) **Vehicle**: Every device in or by which any person or property is or may be transported or drawn upon a public highway except devices moved only by human power or used exclusively upon stationary rail or tracks, and shall include trailers and semi-trailers.

Sec. 10-251. Invitation of Tow Truck to Scene of Accident Required; Exception

No person shall drive a tow truck to or near the scene or situs of an accident or collision on the streets of the City, unless (a) in the case of a nonconsent tow, that person or the tow truck company employing that person has been called to the scene by the Police Department of the City; (b) in the event of a consent tow, that person or the tow truck company employing that person has been called to the scene by the owner of operator of the vehicle or by a person who has possession, custody or control of the vehicle (expressly excluding a peace officer investigating a traffic accident or incident which involves the vehicle); or (c) in the event it is necessary to prevent death or bodily injury to any person involved in an accident or collision.

Sec. 10-252. Tow Truck Prohibited From Following Accident Response Vehicles

No person operating a tow truck shall follow any ambulance or police car which is traveling on a public street in response to a report of an automobile collision or accident.

Sec. 10-253. Soliciting Business Prohibited: Evidence of Guilt

No person shall solicit in any manner, directly or indirectly on the streets of the City, the business of towing any vehicle which is wrecked or disabled on a public street, regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading or purchasing such vehicle. Proof of the presence of any person engaged in the tow truck business or the

presence of any tow truck or motor vehicle owned or operated by any person engaged in the tow truck business, either as owner, operator, employee or agent, on any public street in the City, at or near the scene or situs of a wreck, accident, or collision within one (1) hour after the happening of such wreck, accident, or collision, shall be prima facie evidence of solicitation in violation of this section.

Sec. 10-254. Influence, etc., by Police as to Selection of Tow Truck Prohibited

No police officer investigating or present at the scene or situs of any wreck, accident, or collision on a public street shall, directly or indirectly, either by word, gesture, sign or otherwise, recommend to any person the name of any particular person engaged in the tow truck service or repair business; nor shall such police officer influence or attempt to influence in any manner the decision of any person in choosing or selecting a tow truck or repair service.

Sec. 10-255. Impoundment of Wrecked Vehicle

In the event of a nonconsent tow, any police officer, in the exercise of his discretion as a police officer, may direct that any vehicle shall be taken by the driver of the tow truck towing the vehicle directly to a bonded storage enclosure and there held by the City for inspection or investigation to determine the cause or reason for the accident such vehicle was involved in or such vehicle's disability or for any lawful purpose.

DIVISION 2. DESIGNATION OF TOW SERVICE

Sec. 10-260. Consent Tows

Unless the towing of a motor vehicle is necessitated by or arises out of a traffic accident or a traffic incident that involves the vehicle, in which event an investigating peace officer has exclusive authority to initiate a tow, the tow of a motor vehicle may be initiated by the owner or operator of the vehicle or by a person who has possession, custody or control of the vehicle.

Sec. 10-261. Duties of Investigating Officer at Scene of an Accident

When a police officer investigating an accident or collision determines that any vehicle which has been involved in a collision or accident upon a public street is unable to proceed safely under its own power, or when the owner thereof is physically unable to drive such vehicle, such officer shall request the owner to designate on the tow truck selection form, the tow truck company the owner desires

to remove the vehicle. Such designation by the owner shall be indicated on such form by writing in the blank space provided, the name of the company selected and the form, when completed, shall be signed by the owner. The police officer shall give a copy of the authorization form to the owner and shall retain for the City's record the original. Upon leaving duty on the same day, the police officer shall place such original in the police department file on the incident to which the authorization relates. When the owner has designated the tow truck business desired, the police officer shall communicate that fact immediately to the police department headquarters. It shall be the duty of the officer receiving such information at headquarters to call the designated company to send a tow truck to the scene of the accident or collision.

Sec. 10-262. Wrecker Selection Form; Contents

The Chief of Police shall cause a tow truck selection form to be prepared which shall:

(1) Contain a statement by the owner of the disabled vehicle designating the tow truck business (provided the tow truck business must be one which holds both a business permit and a truck permit under this article, to the extent those permit requirements are applicable) which he desires to remove the disabled vehicle and the place to which he desires such vehicle to be removed in blank spaces indicated;

(2) Contain a statement authorizing any police officer to call the designated tow truck business to remove the disabled vehicle;

(3) Contain a statement in the alternative that the owner has no preference as to a tow truck business and authorizes any police officer to call the tow truck business next in line on the tow truck rotation list maintained at the police headquarters, and a statement that he desires the vehicle to be removed to the place designated by him in a blank space therein; and

(4) Provide space for signature of the owner of the vehicle.

Sec. 10-263. Wrecker Rotation List, Use By Police

(a) If the owner of a vehicle involved in an accident or collision

is physically unable to designate the tow truck business desired, or if such owner has no preference as to tow truck business, or if the owner refuses to designate a tow truck company, the investigating officer shall communicate such fact to the police department headquarters. The police department shall keep a master tow truck rotation list, in alphabetical order, of all tow truck businesses with tow trucks which maintain a place of business within the City and its extra-territorial jurisdiction and which:

(1) Have been issued a permit under this article.

(2) Have applied to be placed on such list.

(3) Maintain twenty-four hour tow truck service that is available through direct phone contract without the use of pagers and/or answering machine.

(b) In addition to the minimum requirements for such tow trucks the owner/driver of such tow trucks must:

(1) Be able to respond to any site in this City within a twenty-minute response time.

(2) Use storage facilities within a five-mile radius of the city hall, or within the City limits.

(c) The tow truck rotation list shall consist of two (2) sections, the first consisting of those tow truck businesses which maintain a place of business within the City (the "Primary List") and the second consisting of those which maintain a place of business within the extra-territorial jurisdiction of the City (the "Secondary List").

(d) Failure of a tow truck company to meet the twenty-minute response time shall result in a warning for the first failure. Upon the second failure in the same calendar year, the tow truck business and its owner and tow truck shall be suspended from the tow truck list for a period of three (3) months. Each succeeding failure shall result in succeeding three-month suspensions.

(e) Upon receiving communication from an investigating officer the police officer receiving such communication at police headquarters shall call the first tow truck business on the Primary List to tow the disabled vehicle and remove the same from the public streets of the City to the place designated by the owner, or to a bonded enclosure. If the first tow truck business on the Primary List is unable or unwilling to tow the vehicle, then the next tow truck business on the Primary List shall be called, continuing until a tow truck business tows the vehicle. In the event none of

the tow truck businesses on the Primary List are able or willing to respond to the call and tow the vehicle in question, then the police officer receiving the communication at police headquarters shall call the first tow truck business on the Secondary List to tow the disabled vehicle and continue in the same manner with the Secondary List until a tow truck business tows the vehicle.

(f) Upon receiving notification of call by the police department, the tow truck business or tow truck driver must either accept or decline the tow truck call, and must not transfer the call to another tow truck service. Each tow truck business shall execute an agreement to hold the City harmless from any and all claims arising from the performance of tow truck business in connection with such listing upon a tow truck rotation list.

Sec. 10-264. Determination of Order on Rotation List

(1) Each tow truck business which is called on a non-consent tow, whether it responds or not and whether it makes the tow or not, shall, in the order called, be moved to the last place on the list on which it appears, whether primary or secondary, and each other tow truck business shall be moved up the corresponding number of positions on the list, whether primary or secondary. Proper notification of each such call shall be made on the rotation list.

(2) In the event the operator who is summoned to tow the disabled vehicle and remove the same for the public of the streets of the City either—

(a) fails or refuses to respond to the call by arriving at the scene of the accident with his tow truck within twenty (20) minutes of the issuance of the call; or

(b) either fails or refuses or is otherwise unable to tow and remove the vehicle from the scene within one (1) hour after the police officer at the scene of the accident has authorized and directed the removal of the wrecked vehicle,

then in either of such events, that operator shall, at the request of the police officer summoning such operator, remove his tow truck from the scene and the police officer in question shall then summon the next tow truck operator on the week's rotation list.

Sec. 10-265. Tow Truck Operator Records

(a) Every tow truck operator qualified for and whose name appears at its request on the tow truck rotation list shall maintain at its garage or

storage location as provided above records as to all vehicles removed by it after being notified to do so by the personnel of the City police department in accordance with the provisions of this chapter.

(b) The records required to be kept by subparagraph (a) shall contain the following information:

(1) Make, model and serial number of disabled automobile moved by the operator;

(2) Location of disabled vehicle from which it was removed and time of removal;

(3) Total amount charged for towing;

(4) Storage rate per day; and

(5) An inventory of the vehicle. It shall be the obligation of the police officer investigating the accident in question to prepare an inventory list in duplicate on which is noted a description and the disposition of all personal property located within the disabled vehicle and a description of all damage to the vehicle at the time of its removal, which list shall be signed by both the police officer and the tow truck operator, with the tow truck operator to receive at the scene of the accident one of the duplicate inventory lists and the officer to retain the other. The inventory list in question shall be prepared in the presence of the tow truck operator and shall include any and all items which either the tow truck operator or the police officer request.

The above described records shall be preserved by the tow truck operator for at least three (3) months from and after the date said operator came into possession of the disabled vehicle.

(c) The records required to be kept by the provisions of subparagraph (b) shall be made available to the members of the City police department by the tow truck operator at any reasonable time.

DIVISION 3. TOW TRUCK BUSINESS PERMIT

Sec. 10-170. Permit Required

Every tow truck business desiring to perform non-consent tows within the City, and every tow truck business having a place of business within the City or its extra-territorial jurisdiction desiring to perform consent tows in the City, shall first obtain a permit to engage in such business. It shall be unlawful to engage in the tow truck business (except for consent tows performed by tow truck businesses having no place of business within the City or its extraterritorial jurisdiction) within the City without first obtaining a permit. Each permit issued shall indicate whether it is valid for nonconsent tows only, consent tows, or for both.

Sec. 10-171. Application

Any person desiring a permit required by the provisions of this ordinance shall file a sworn written application therefor with the Chief of Police, which such application shall contain the following:

(a) The name and address of the applicant and all drivers.

(b) The number of tow trucks proposed to be operated by applicant, and the motor vehicle identification and Texas license number of each such tow truck.

(c) The address and telephone number of the business location from which applicant will operate such tow truck business, if he secures a permit.

(d) The types of tow truck equipment which he proposes to place in operation.

(e) Whether the applicant has available space for properly accommodating and protecting all disabled motor vehicles to be removed by him from the places where they are found disabled.

(f) Whether the applicant desires his name to appear on the tow truck rotation list.

(g) The name of the true owner of the company concerned.

(h) Such other information as the Chief of Police shall find

reasonably necessary to effectuate the purpose of this article and to arrive at a fair determination of whether the terms of this article have been complied with.

Sec. 10-172. Fees

At the time of the application for a permit to be issued under the provisions of this article is filed with the City Secretary, the applicant therefor shall pay a fee of Twenty-Five and No/100 Dollars ($25.00) for each tow truck proposed to be operated in the City thereunder. If application after July 1st, the first year shall be prorated and fee will be Twelve and 50/100 Dollars ($12.50). Such a fee shall not be returned to the applicant in the event the permit is refused.

Sec. 10-173. Liability Insurance Required

No permit shall be issued under the provisions of this article unless the applicant therefor shall procure and keep in full force and effect a policy of policies of public liability and property damage insurance issued by a casualty insurance company authorized to do business in the State and in the standard form approved by the State Board of Insurance Commissioners, with the insured provisions of said policy or policies including the City as an insured, and the coverage provisions insuring the public from any loss or damage that may arise to any person or property by reason of the operation of a tow truck of such operator and providing that the amount of recovery on each tow truck shall be in limits of not less than the following sums:

(1) For damages arising out of bodily injury to or death of one person in any one accident . . . . . $ 250,000.00

(2) For damages arising out of bodily injury to or death of two or more persons in any one accident $500,000.00

(3) For injury to or destruction of property in any one accident $100,000.00

Sec. 10-174. Local Telephone Number Required

No permit shall be issued under the provisions of this article unless the applicant shall have and maintain a local exchange telephone number for the convenience of the citizens of the City.

Sec. 10-175. Storage Enclosure Required

No permit shall be issued under the provisions of this article unless the tow truck shall have the use of a locked enclosure to store wrecked, disabled or impounded motor vehicles. Such enclosure shall be of the wire mesh type, at least five feet (5') high. Such enclosure shall have affixed to the fence at the entrance a sign indicating the name, address and telephone number of the person in charge thereof. Such enclosure, if of the open type, shall be adequately lighted at night. The enclosure mentioned above may be a completely enclosed building. Regardless of the type of enclosure provided, it must include a completely enclosed building capable of storing at least two (2) vehicles and further capable of being securely locked.

Sec. 10-176. Issuance

The City Secretary shall issue a permit under the provisions of this article to all applicants complying with the provisions of this article.

Sec. 10-177. Revocation

The City Council shall revoke any permit issued under the provisions of this article when it finds any of the following:

(a) Their permit was procured by fraudulent conduct or false statement of a material fact in the written application; or

(b) The permit holder has violated within the City limits any applicable provision of this Code, State law or City ordinance, rule or regulation.

DIVISION 4. VEHICLE PERMIT

Sec. 10-180. Required; Contents; Term

In addition to a permit authorizing a person to engage in the tow truck business there shall also be issued a permit for each approved tow truck vehicle owned by the permitee used in the tow truck business to make nonconsent tows. Each permit for a tow truck shall state that such tow truck has been inspected and approved under the direction of the Chief of Police, and shall be affixed securely to the inside of the windshield of the appropriate tow truck. No person shall operate a tow truck on the public streets of the City unless a certificate of registration to engage in the tow truck business has been issued by the State to the owner of such tow truck. Additionally, no person or tow truck owner shall engage in the nonconsent tow truck business within the boundaries of the City without applying for, paying the fee and receiving the permit

described in section 10-172. No permit shall be transferrable, and every permit shall expire at midnight on December 31 of the calendar year in which issued, unless sooner revoked by the City for failure to maintain the standards established by this article.

Sec. 10-181. Prerequisite to Operation; Display on Windshield Mandatory

No person shall operate a tow truck for nonconsent tows on the public streets of the City unless an inspection permit for such tow truck has been issued for such vehicle by the Chief of Police, and no person shall operate a tow truck for nonconsent tows on the public streets of the City unless the permit duly issued to such tow truck is posted on the windshield of such tow truck. No person shall operate a tow truck for nonconsent tows on the public streets of the City with an invalid inspection permit displayed or with an inspection permit that has been revoked for breach of the standards established by this article or for breach of the provisions of this article.

Section Two

It is hereby declared to be the intention of the City Council that the several provisions of this ordinance are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this ordinance is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provision of this ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section Three

Any rules, ordinances, police regulations, resolutions, and/or policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this ordinance, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

Section Four

The failure to obey the above ordinance in accordance with the Code of Ordinances of the City of West Columbia, Texas, shall constitute a misdemeanor punishable by a fine of not to exceed $200.00, with each days violation.

Section Five

This ordinance shall be effective and applicable immediately from and after the date of its passage and approval by the City Council of the City of West Columbia, and the publication of its caption as provided by law.

PASSED AND APPROVED this the 14th day of May, 2003.

David E. Foster

DAVID FOSTER, Mayor

ATTEST:

Deborah A. Sutherland

DEBORAH SUTHERLAND,
City Secretary