

ORDINANCE NO. 2021-21

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS CODE OF ORDINANCES BY AMENDING CHAPTER 48, VEHICLES FOR HIRE, TO DELETE ARTICLE II, TAXICABS, IN ITS ENTIRETY; AMENDING SECTION 48-177 TOW TRUCK COMPANY APPLICATION, RENEWAL, OF DIVISION 2, TOW TRUCK COMPANY LICENSE, OF ARTICLE II TOW TRUCKS AND TOWS, TO REMOVE THE REQUIREMENT OF A TOW TRUCK COMPANY TO PROVIDE A BACKGROUND CHECK ON ITS DRIVERS; AMENDING SECTION 48-192, APPLICATION, OF DIVISION 3 TOW TRUCK DRIVER'S PERMIT; OF ARTICLE III, TOW TRUCKS AND TOWS; TO REQUIRE FINGERPRINTING AND BACKGROUND CHECKS THROUGH THE FEDERAL BUREAU OF INVESTIGATIONS AND THE TEXAS DEPARTMENT OF PUBLIC SAFETY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

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WHEREAS, the City Council of the City of Tomball, Texas, finds that it is in the best interest of the health, safety and welfare of the citizens to require applicants for a Tow Truck Driver under Chapter 48, Vehicles for hire, to submit to a background check through the Federal Bureau of Investigations and the Texas Department of Public Safety as set forth in this ordinance; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas is hereby amended by deleting therefrom, Article II, Taxicabs, in its entirety.

Section 3. The Code of Ordinances is further amended by amending Section 48-177, Tow Truck Company Application; Renewal, of Division 2, Tow Truck Company License, of

Article III, Tow Trucks and Tows, by deleting therefrom the language struckthrough below,

Section 48-177 to read as follows:

“Section. 48-177. - Tow truck company application; renewal.

(a) *Tow truck company application.* Any applicant for a tow truck company permit shall submit, on a form supplied by the City of Tomball, a verified application form containing or accompanied by the following:

- (1) The true trade name, true owner's name, address, and telephone number of the tow truck company. The company may be a sole proprietorship, partnership or corporation;
- (2) Number and types of tow trucks to be operated;
- (3) Name, address, and telephone number of the owner of the tow truck company, and if a corporation, the names, addresses, telephone numbers of owners holding more than ten percent of the shares of the corporation;
- (4) An agreement that the applicant will participate in the tow truck rotation list;
- (5) Proof of ownership, which shall mean the title with the owner's name, by the applicant of the tow truck to be used. Such ownership shall be verified at the time of application and quarterly thereafter by the police department and upon any renewal of insurance;
- (6) A detailed description of each tow truck proposed to be operated, including Texas tow truck license plate number;
- (7) A copy of the state-issued tow truck license (Cab Card);
- (8) The original certificate of insurance that lists public liability, property damage, and any and all other amounts as prescribed by the State of Texas which must show the City of Tomball as certificate holder. The original certificate will be returned to the owner after a photocopy has been made;
- (9) A photocopy of the vehicle storage facility license issued by the State of Texas which must include the physical address and phone number of the facility to be used. The VSF must be located within the extraterritorial jurisdiction (ETJ) of the City of Tomball and must be publicly listed with local telephone companies; and

(10) Written proof that the VSF meets Texas Accessibility Standards.

(b) The chief of police shall inquire about the criminal convictions of the applicant or the applicant's drivers involving moral turpitude including burglary, theft, robbery, forgery, and perjury or relevant convictions that would reflect on the ability to operate a tow truck.

(c) Only one license may be issued to each tow truck company, and a person, partnership, or corporation may not own a controlling interest in another tow truck company.

(d) An annual license renewal which is applied for at least 20 days prior to the expiration of the license will be granted upon compliance with the provisions of this division. An applicant who has failed to renew or whose license has been revoked under this division is considered an initial applicant.

(e) The chief of police may, at any time, require additional information of an applicant or licensee to clarify items on the application.

(f) *Supplemental permit for additional tow trucks.*

(1) Where an owner has obtained a wrecker tow truck permit and thereafter desires to increase the number of wreckers tow trucks to be operated, he shall file a supplemental application with the director chief of police, setting forth his permit number and the fact that he desires to operate additional wreckers tow trucks, giving the make, model, vehicle identification number and state license number of each additional wrecker tow truck. He shall also pay a permit fee as currently established or as hereafter adopted by resolution of the city council from time to time for each additional wrecker tow truck and file a new insurance policy meeting the requirements of this article, covering the new wrecker tow truck.

(2) The chief of police shall examine such supplemental tow truck application, fee, and policy, and if the same are in order, the chief of police shall issue a supplemental permit covering the new tow truck.

(g) *Supplemental permit for substitute tow truck.* Whenever an owner wishes to discontinue the use of a tow truck during the period covered by his permit and replace it with another, he shall file an affidavit stating that he has discontinued using the tow truck covered by his permit, and desires to use another tow truck in its place. He shall attach a certificate from his insurer that such insurer has been notified thereof and agrees thereto. The chief of police shall then issue the owner a supplemental permit at a cost as currently established or as hereafter

adopted by resolution of the city council from time to time, which will cover the new tow truck and cause the description of the old tow truck to be eliminated from the original permit. In the affidavit, certificate from the insurer, and supplemental permit, the old and new tow truck shall be described by make, model, vehicle identification number, and state license number.

(h) *Driver records.* Each tow company must submit and maintain a list of operator/drivers who will be operating the tow trucks included on the company's license, along with their address, phone number, Texas driver's license number, ~~and a criminal background for each driver.~~ Drug related offenses, theft, assault, or crimes of moral turpitude can be grounds for denial. Each driver must possess a TDLR incident management license and submit to the city a copy of the license.”

Section 4. The Code of Ordinances is further amended by amending Section 48-192, Application, of Division 3, Tow Truck Driver’s Permit of Article III, Tow Trucks and Tows, by deleting therefrom the language struckthrough below and adding thereto the language underscored below, Section 48-192 to read as follows:

“Section 48-192. – Application.

(a) No person shall drive or operate any tow truck for the purpose of making rotation non-consent and or police directed/initiated tows in the City of Tomball unless such a person possesses a current, valid tow truck driver permit issued by the city secretary, nor shall any person allow, permit, or cause to be operated any tow truck for the purpose of making rotation or police initiated tows, either on his own account or in the employ of another. A violation of this section shall be a class C misdemeanor and is punishable as provided in section 1-14 of this Code, or by suspension.

(b) Each person desiring a tow truck driver permit shall submit an application to the city secretary on a form furnished by the city. On the application the applicant shall set forth:

- (1) The name and address of the applicant;
- (2) The applicant's date of birth, place of birth, sex, and each address where he has resided in the two years immediately preceding his application;

- (3) The name and address of each employer of the applicant and any businesses that the applicant has been engaged in during the two years immediately preceding the filing of the application;
- (4) Evidence that the applicant has operated a motor vehicle for at least six months immediately prior to the filing of the application;
- (5) Whether the applicant has been convicted of any criminal offense in this state or any other state or county preceding his application or has spent any time in jail or prison preceding his application due to a conviction for a criminal offense. If he has been convicted of any such offense or been in jail or prison, he shall set out the offense convicted of, the date of the conviction and the police, court, and case numbers of the case. ~~All applicants shall, in their application, authorize the police department to investigate as to whether the applicant has committed any criminal offense;~~
- (6) ~~The applicant shall also show the chief of police evidence~~ Evidence that he has a current license valid under state law for vehicles greater than one ton, issued by the state, ~~and shall complete a form allowing the chief of police and the police department to obtain information as to the applicant's driving record from the state and from any state which had issued the applicant a driver's license which was valid at any time within the two years immediately preceding the submission of the application;~~
- (7) Pursuant to Sections 411.122 and 411.087 of the Texas Government Code, which authorizes the city to obtain criminal history information maintained or indexed by the Federal Bureau of Investigation ("FBI") through the Texas Department of Public Safety ("DPS"), each applicant:
 - a. shall be required to provide a complete set of fingerprints from a Fingerprint Applicant Services of Texas ("FAST") facility using the City's FAST pass provided to the Applicant by the City and other identifying information to the official designated by the permitting, licensing or authorizing department, along with any applicable fee and any release or waiver forms required in order for the official to conduct a national background check through the FBI.

Upon receipt of the fingerprints and any applicable fee, the city is authorized to submit the fingerprints to the DPS for a search of the State's criminal history record, and the DPS is authorized to forward a set of the fingerprints to the FBI for a national criminal history check. The results of the FBI check will be returned to the DPS, which will disseminate the results of state and national criminal history checks to the city.

- (8) Such other information as the chief of police or his designee finds relevant; and
- (9) Two current photographs of the applicant.

(c) After the application has been completed, the applicant shall sign the application and shall execute a sworn affidavit that all matters stated in the application are true and correct.

~~(d) The applicant shall also provide the chief of police or his designee with evidence that he is at least 18 years of age and submit himself to be fingerprinted at a time and place designated by the chief of police or his designee.”~~

Section 5. Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same

notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF JUNE 2021.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED, AND ORDAINED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 21ST DAY OF JUNE 2021.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan
GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

Doris Speer
DORIS SPEER, City Secretary
City of Tomball