

ORDINANCE NO. 1952

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EULESS, TEXAS, CHAPTER 90 “VEHICLES FOR HIRE”, BY AMENDING ARTICLE IV “WRECKERS AND TOW TRUCKS”; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Euless is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council finds that regulation of vehicle towing is necessary for the purpose of promoting safety by preventing the unexpected loss of the use of one's vehicle, except in those instances wherein the owner or operator of the vehicle has been put on notice through signs of the likelihood of the involuntary tow of the vehicle; and

WHEREAS, the City Council finds that regulation and operators of vehicle towing is necessary for the purpose of promoting safety by protecting vehicle owners from towing mistakes and the outright theft of vehicles, by preventing severe congestion and interference with police and ambulance at accident scenes, and to expedite the recovery of nonconsensual towed vehicles to restore safe transportation to the owner or operator; and

WHEREAS, the City Council believes that the proposed safety-regulations governing persons performing nonconsensual tows would promote the public safety in the City by limiting the number of false auto theft reports processed by the police department, thereby allowing the police to devote more time to responding to more critical public safety situations; and

WHEREAS, the City Council finds that regulation of vehicle towing is necessary for the purpose of promoting safety by implementing regulations to limit the practice of “chasing” in the City and also to limit to the extent possible the likelihood of violent or confrontational encounters between tow-truck operators and vehicle owners or operators; and

WHEREAS, the City Council desires to implement the recommendations of city staff to provide for contracting for police towing and vehicle storage and to establish requirements for signs for non-consent tows in addition to those required by the Texas Occupations Code; and

WHEREAS, the City of Euless, Texas deems it necessary and proper and in the best interests of the health, safety, and general welfare of its citizenry to adopt provisions regulating towing services in the City, all of which are related to the goal of increasing safety in the City of Euless.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

SECTION 1.

Article IV “Wreckers and Tow Trucks” of Chapter 90 “Vehicles for Hire” of the Code of Ordinances, City of Euless is hereby amended in its entirety to read as follows:

ARTICLE IV. TOW TRUCKS AND NONCONSENT TOWS

Sec. 90 – 81. Requirements.

(a) *Scope of activity for which required.* No person shall drive, operate or cause to be operated, nor shall any person employ, permit or allow another to drive, operate or cause to be operated, any tow truck over any street in the City for the purpose of removing, moving or towing of any vehicle without first being properly licensed, insured and equipped in accordance with state law and the Texas Department of Licensing and Regulation regulations.

(b) All tow trucks originating a consent tow within the City must comply with the licensing and equipment regulations and adhere to the specific tow truck classifications for the specific use of that tow truck as set forth in state law and the Texas Department of Licensing and Regulation regulations.

Sec. 90 – 82. Definitions.

Abandoned: The condition of being abandoned, as defined in Chapter 683 of the Texas Transportation Code, as amended.

Attempt to retrieve the motor vehicle: For purposes of paying the drop charge, attempt to retrieve the motor vehicle means any verbal request that a reasonable person would understand to mean, "Do not tow my car."

Before its removal from the property: As used in this Chapter this term is in reference to a vehicle parked on property other than a public roadway and shall mean the time period until the tow truck enters a public street, road or highway,

City: The City of Euless in the County of Tarrant and State of Texas.

Consent tow: Any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle.

Contract towing service: The towing company performing police pulls for the City pursuant to contract.

Disabled vehicle: A vehicle which is rendered unsafe to be driven as the result of some occurrence other than a wreck, including but not limited to, mechanical failures or breakdowns, fire, vandalism or a vehicle which is in a safe driving condition, but the owner is not present or able or permitted to drive so as to reasonably necessitate that the vehicle be removed by a tow truck.

Drop fee: The fee charged for a nonconsent tow which is disengaged pursuant to this Article, while the towed vehicle is still on the premises from which it is being removed.

Hooked up: Means the vehicle is fully prepared for transport by attachment to a tow truck, lifted in tow position, with tow lights and safety chains attached and, if required, placed on a dolly in a raised position and the only thing remaining is for the tow operator to drive away.

Illegally or Unauthorized Parked Vehicle: A vehicle parked, stored or situated in violation of any State law or City ordinance or without the effective consent of the owner of the premises where the vehicle is parked, stored or situated.

Junk vehicle: A vehicle as defined in Chapter 683 of the Texas Transportation Code, as amended. Junk vehicle does not include the following: (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; (2) a vehicle or portion thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer; or (3) an unlicensed, operable or inoperable antique and special interest vehicle stored by a collector on his property, provided that the vehicle and the outdoor storage area is maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery or other appropriate means.

Nonconsent tow: Means any tow, which originates in the City, of a motor vehicle that is not a tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term includes but is not limited to, a police pull, a tow of a motor vehicle in which the tow truck is summoned because of a traffic accident or to a traffic incident, and a private property tow.

Parking facility: Public or private property used, wholly or partly, for restricted or paid parking. The term includes:

- (1) A restricted space on a portion of an otherwise unrestricted parking facility; and
- (2) A commercial parking lot, parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

- a. A portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
- b. The area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or curb of the roadway, whichever is further from the facility's property line.

Person: Includes an individual, firm, corporation, association, partnership, joint venture or society.

Police pull: A police-initiated nonconsent tow or other transportation of a vehicle by a tow truck which is the result of a police officer exercising his authority to effect the removal of the vehicle pursuant to State law and this Article.

Private property tow: Any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

Street: The entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for the purposes of vehicular travel.

Tow truck: A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

- (1) a motor vehicle owned and operated by a governmental entity, including a public school district;
- (2) a motor vehicle towing:
 - a. a race car;
 - b. a motor vehicle for exhibition; or
 - c. an antique motor vehicle;
- (3) a recreational vehicle towing another vehicle;
- (4) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in furtherance of a commercial enterprise;
- (5) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or
- (6) a motor vehicle that:

- a. is owned or operated by an entity the primary business of which is the rental of motor vehicles; and
- b. only tows vehicles rented by the entity.

Towing company: means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn upon a street or roadway, except devices moved by human power or used exclusively upon stationary rails or tracks. The term includes as operable or inoperable automobile, truck, motorcycle, recreational vehicle or trailer.

Vehicle storage facility: Means a garage, parking lot, or other facility that is:

- (1) owned by a person other than a governmental entity;
- (2) used to store or park at least 10 vehicles each year; and
- (3) that is operated by a person who holds a license issued under Texas Occupations Code Chapter 2303 to operate the facility.

Sec. 90 – 83. Contract for Police Pulls.

Police Pulls for the City will be made pursuant to a contract between the City and a qualified towing service.

Sec. 90 – 84. Authority for Police Pulls.

(a) A police officer for the City is hereby authorized to move a vehicle, require the operator or other person in charge of a vehicle to move the same, or have the vehicle removed by the City’s Contract Towing Service under this Article to the nearest place of safety or to the premises of said Contract Towing Service, under the following circumstance:

- (1) When any vehicle is left unattended upon any bridge, viaduct or causeway, or in any tunnel where such vehicle constitutes an obstruction to traffic;
- (2) When any vehicle is otherwise illegally parked so as to block the entrance to any private driveway;
- (3) When any vehicle is found upon a street and a report has been previously made that the vehicle has been stolen, or there is reasonable grounds to believe the vehicle is stolen;

- (4) When an officer has reasonable grounds to believe the vehicle has been abandoned;
- (5) When a vehicle upon a street is wrecked or disabled and
 - a. Because of the wreck or disability its normal operation is impossible or impractical; or
 - b. The person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such extent as to be unable to provide for its removal or custody or are not in the immediate vicinity of the wrecked or disabled vehicle;
- (6) When an officer arrests a person driving or in control of a vehicle for an alleged offense and there is no other alternative to impoundment;
- (7) Whenever an officer finds a vehicle standing upon a street, or public or private property in violation of any State law or City ordinance;
- (8) When the owner or operator consents;
- (9) When in the opinion of a police officer, said vehicle constitutes a hazard or interferes with a normal function of a governmental agency;
- (10) When any vehicle is found to be a Junk Vehicle, in accordance with the City's Junk Vehicle ordinance Section 14-146 ;
- (11) When in the opinion of the a police officer, the safety of said vehicle is imperiled by reason of any catastrophe, emergency or unusual circumstances;
- (12) When the operator of a motor vehicle is requested to show proof of financial responsibility on that vehicle and, in the opinion of a police officer, is unable to establish financial responsibility under section 601.051 of the Texas Transportation Code;
- (13) Where otherwise authorized by law.

Sec. 90 – 85. Accident Scene Clean Up.

Each towing company called to the scene of an accident shall comply with state law and Texas Department of Licensing and Regulation regulations governing the removal of debris from the roadway.

Sec. 90 – 86. No tow truck at scene unless called by police.

No person shall drive a tow truck to or near the scene of an accident within the city to directly or indirectly solicit towing services unless the person has been called to the scene by the owner of the vehicle or his authorized representative or by the police department.

Sec. 90-87. Solicitation of tow truck business prohibited.

No person shall solicit any tow truck business in any manner, directly or indirectly, on the streets of the City at or near the scene of an accident or of a wrecked or disabled vehicle.

Sec. 90-88. City employees not to recommend tow truck.

No employee of the City shall recommend to any person the name of any particular person engaged in the tow truck business for which solicitation is prohibited, nor shall any city employee influence or attempt to influence in any manner a decision of a person in choosing or selecting a tow truck operator.

Sec. 90 – 89. Pull Sheets.

The Chief of Police shall cause to be prepared a form to use for each police pull in the City made by the Contract Towing Service.

Sec. 90 – 90. Procedures for Determination of Owner’s Rights.

(a) When a vehicle is towed pursuant to a police pull, the owner of said vehicle shall be afforded the right to a hearing in the Justice Court in accordance with Texas Occupations Code Section 2308.452. This hearing shall be pursuant to the procedures outlined in Texas Occupations Code Chapter 2308.

(b) Unless a police hold is placed upon a vehicle towed pursuant to a police pull, it shall be the responsibility of the Contract Towing Service to determine whether the vehicle should be released, when it should be released and to whom it should be released.

Sec. 90 – 91. Responsibilities of Tow Truck Operator– Record Keeping.

(a) Any towing company or operator of a tow truck, not performing a tow pursuant to the city towing contract, who performs a nonconsent tow in the City shall keep written records on each vehicle it tows as a nonconsent tow. These records shall contain:

- (1) The year, make, model, color, correct license plate number, state issuing the license, correct vehicle identification number of the vehicle, and the owner’s or operator’s name if reasonably available;

- (2) The date, time and location from which the vehicle was towed, the name of the person who authorized the tow, and the specific reason for the tow;
- (3) The name of the tow truck driver that towed the vehicle, and the licensing number of the truck along with the license plate number of the truck that towed the vehicle; and
- (4) All amounts charged for the towing of such vehicle, and the specific nature of each charge.
- (5) Photographs or videos of each vehicle before it is towed, demonstrating the condition of unauthorized parking, for example, but not limited to, a vehicle parked in a handicapped parking space without a permit, blocking a dumpster, blocking a vehicle in a parking space, blocking an entrance or exit, parking in a fire lane or other violation.

(b) The towing company operator, his agent or employee shall make these records available for inspection and copying by the Chief of Police or his designee upon his request, and the City shall have access, upon request, to any books, documents, papers and records for the purpose of making audit examinations during the operating hours of the tow truck operator.

(c) Required records shall be kept under care and custody of the towing company for at least two (2) years from the date of the tow.

Sec. 90 – 92. Signage and Posting.

(a) Every parking facility owner who causes or authorizes a nonconsent tow must post a sign in accordance with state law. In addition to the requirements set forth in state law, each sign shall provide the name of the person or firm authorized to tow vehicles from the parking facility; and name and address of the vehicle storage facility the vehicle is removed to.

(b) Every parking facility owner who causes or authorizes a nonconsent tow must remove all signs upon the termination of the parking facility owner's interest in the parking facility or upon the expiration of the parking facility owner's nonconsent tow contract.

Sec 90 – 93. Towing without Specific Authority Prohibited.

(a) Regardless of any general contractual or "patrol account" arrangement which may exist between a towing company and a parking facility owner, it is a violation of this Article to make a nonconsent tow of any vehicle without first securing a specific, written directive to tow such vehicle signed by the owner of the parking facility or the owner's authorized representative that is not a tow truck service. Such directive must:

- (1) Identify the vehicle to be towed by make, color, and license plate number.

- (2) Identify the person signing the directive.
- (3) State the location from which the vehicle is to be towed.
- (4) State the date and time the directive is signed.

Sec. 90 – 94. State Regulation and Towing Charges for Nonconsent Tows.

(a) The owner or operator of a towing company commits an offense if he charges a fee in excess of the maximum fee for the applicable nonconsent tow fee set by state regulation.

(b) A towing company or vehicle storage facility operator may not charge any other fee for a nonconsent tow or service related to a nonconsent tow except a towing fee or a drop fee tow.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is subject to a nonconsent tow attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged a drop fee (if the motor vehicle is hooked up) is \$100. Before its removal from the property the vehicle owner or operator has an absolute right to regain possession of the vehicle by payment of the drop fee. In the event the owner or operator arrives to move the vehicle before the vehicle is fully hooked up, no drop fee may be charged.

(d) The towing company and the vehicle storage facility must comply with State law and the Texas Department of License and Regulation regulations as they pertain to methods of payment. Notice of the methods of payment shall be given by the towing company to the owner or operator of the vehicle towed if the owner or operator is on sight at the time of the tow and by the vehicle storage facility when the owner appears to claim the towed vehicle.

Sec. 90 –95. Notice of Occupations Code Chapter 2308 Hearings.

(a) Upon initial contact with the owner or operator of a vehicle which is the subject of a nonconsent tow, a tow truck operator, a vehicle storage facility operator, or any employee or agent thereof shall give written notice to the vehicle owner or operator of his right to a hearing that meets the requirements of the Texas Occupations Code.

(b) A person commits an offense if with criminal negligence he fails to provide notice as provided by this section.

Sec. 90- 96. Maximum Distance of Nonconsent Tows.

Vehicles involved in a nonconsent tow must be transported directly to a vehicle storage facility. A parking facility cannot be used as a temporary vehicle storage facility. Nonconsent towed vehicles shall not be taken to a vehicle storage facility that is more than three (3) miles outside the City.

Sec. 90 – 97. Culpable Mental State.

Any offense in this Article which does not include a culpable mental state in its definition shall be deemed not to require one.

Sec. 90 – 98. Notice to Vehicle Owner or Operator.

Upon contact with the owner or operator of a vehicle which is the subject of a nonconsent tow, the towing company or a vehicle storage facility operator, or any employee or agent, shall give written notice to the vehicle owner or operator of the information required by this Section. If there is no person-to-person contact, then this notice shall be mailed or faxed to the registered owner of the vehicle.

The intent of this Section is that the owner or operator of a vehicle that is the subject of a nonconsent tow receive written information from the towing company or vehicle storage facility operator, in order to enhance the safety in a potentially volatile situation and allow safe, prompt, legal and orderly vehicle retrieval after a nonconsent tow without a breach of the peace by any party:

- (1) The name, address and phone number of the towing company and the vehicle storage facility;
- (2) The name and address of the property owner that authorized the tow;
- (3) The methods of payment accepted by the towing company and vehicle storage facility;
- (4) An address for citizens to file written complaints with the City;
- (5) A copy or summary of this Article.

Sec. 90 – 99. Violation; Penalties.

Any person who violates any provision of this Article except Section 90-94 shall be guilty of a misdemeanor upon conviction and may be punished by a fine not to exceed \$500. Any person who violates Section 90-94 of this Article shall upon conviction be punished by a fine provided in Section 2308.505 of the Texas Occupations Code.

Each act of violation and each day in which a violation is permitted to continue shall constitute a separate offense.

Sec. 90 – 100. Other Remedies.

The City shall be entitled to pursue all other criminal and civil remedies to which it is entitled under any other law and the remedies provided herein are not exclusive.

SECTION 2.

Cumulative Clause. This Ordinance shall be cumulative of all provisions of the City of Euless, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 3.

Severability Clause. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section

SECTION 4.

Penalty Clause. Any person who violates any provision of this Article except Section 90-94 shall be guilty of a misdemeanor upon conviction and may be punished by a fine not to exceed \$500. Any person who violates Section 90-94 of this Article shall upon conviction be punished by a fine provided in Section 2308.505 of the Texas Occupations Code.

SECTION 5.

Savings Clause. Chapter 90 of the Code of Ordinances, City of Euless, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6.

Publication Clause. The City Secretary of the City of Euless is hereby directed to publish the caption and penalty clause of this ordinance at least two times in the official newspaper of the City of Euless as required by Section 12 of Article II of the Charter of the City of Euless.

SECTION 7.

Effective Date. This ordinance shall be in full force and effect from and after its passage and publication as provided by the Euless City Charter and the laws of the State of Texas.

PRESENTED AND GIVEN FIRST AND FINAL READING AND APPROVED at a Regular Meeting of the Eules City Council on the 27th day of March 2012 by a vote of ____ ayes, ____ nays, and ____ abstentions.

APPROVED:

ATTEST:

Mary Lib Saleh, Mayor

Kim Sutter, TRMC, City Secretary

APPROVED AS TO FORM:

Wayne K. Olson, City Attorney