

COMMON COUNCIL



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I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 15th day of April, 2014, that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 8th day of April 2014.

ART. X POLICE-REQUESTED TOWING

SECTION 14-158. PURPOSE AND DEFINITIONS.

This article, adopted in accordance with §§46.2-1217 and 1232 of the Code of Virginia, is intended to apply to requests for towing services made by the Winchester Police Department in order to ensure storage, availability, and service by persons and firms authorized to provide towing services at the request of the Chief of Police or other law enforcement personnel. The provisions of this ordinance are not applicable to towing not at the request of official law enforcement personnel.

Notwithstanding this division or any agreement executed pursuant to it, all tow services authorized to provide service shall remain independent contractors and shall not be deemed to be employees of the city.

This Article is intended to complement other specific provisions of the City Code related to towing including but not limited to the towing of abandoned vehicles under Chapter 14, Art. XIII, and towing for non-payment of parking citations covered under in Section 14-61. To the extent that the provisions of this article conflict with other specific provisions of the Code, the other specific provision of the Code shall supersede.

The following definitions shall be used in the interpretation and administration of this Article. The definitions of various terms as presented herein do not necessarily represent the same definitions as may be found for the same terms in other Chapters of the Code.

- (a) *Authorized Towing Service*: A towing firm or service which meets the requirements of the Code of Virginia, Title 46.2, Chapter 12, and that has entered into a Towing Service Agreement to provide services at the request of the Police Department or other law enforcement personnel.
- (b) *Emergency*: Refers to a critical traffic problem or extreme weather condition, a parade or other similar public event, a riot, or a disaster or similar event not ordinarily or usually occurring, as determined by the City Manager or his or her designee.

- (c) Heavy-duty tow rotation list means the list maintained by the chief of police of those towers meeting the requirements of section 14-169.b herein, who are authorized to respond city-wide to the police department or other law enforcement personnel's requests for heavy towing.
- (d) *Officer*: Refers to a law enforcement officer sworn in the City of Winchester or any other sworn law enforcement officer with jurisdiction at the scene of the tow. This term may also refer to law enforcement communications made by dispatch personnel.
- (e) *Police-Requested Towing*: All requests made by law enforcement officers of the City pursuant to the Code of Virginia §46.2-1218 or 1209, or requests made by a law enforcement officer at the request of an owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator.
- (f) *Suspension*: Temporary removal from the City's Towing Rotation List.
- (g) *Termination*: Permanent removal from the City's Towing Rotation List as well as termination of the Towing Service Agreement.
- (h) *Towing Business*: A towing service in operation for a minimum of one (1) year and meeting the requirements of Section 14-161, herein operating from a location within the City or within five miles of the City limits such that service response can be made within response times allotted.. For purposes of this Article, multiple corporations, partnerships, sole proprietorships or other legal entities owned or controlled by one or more members of a single household are deemed to constitute a single towing business.
- (i) *Tow Rotation List*: List maintained by the Chief of Police indicating those towing services authorized to respond to requests made by law enforcement personnel for the towing of vehicles. "Heavy-Duty Tow Rotation List" refers to a separate list of authorized towing services capable of responding to requests for heavy-duty towing.
- (j) *Vehicle*: Refers to a motor vehicle, trailer, semitrailer, or parts thereof.

SECTION 14-159. POLICE-REQUESTED TOWING; TOWING SERVICE AGREEMENT AND TOW ROTATION LIST.

- (a) The City adopts this Article pursuant to authority provided in the Code of Virginia §46.2-1217 and 1232 to regulate services rendered in response to police towing requests. Such regulation shall be established through use of a Towing Service Agreement, which shall specify the criteria for becoming an authorized towing service upon the advice of the Towing and Recovery Advisory Board.
- (b) *Application*. A towing and recovery operator may apply for inclusion on the Tow Rotation List by submitting an application to the Chief of Police. The Chief of Police shall conduct an investigation to determine the accuracy of the information provided and

the eligibility of the applicant based upon the criteria set forth in the Towing Service Agreement. Qualified towing services will sign a standard Towing Service Agreement and be placed on the Tow Rotation List or Heavy Duty Tow Rotation List as appropriate. Applicants found to be unqualified will have their application returned with a written determination indicating the reasons for the denial. Except as otherwise provided herein, the only modification to the standard agreement shall be as to the type of towing vehicles the authorized tower will supply

- (c) **Tow Rotation List.** The Chief of Police shall ensure that towing services are called on a rotating basis in accordance with the Tow Rotation List. Towing services not included on the Tow Rotation List shall not be called by an officer except in the event of an emergency, as defined above and in the Code of Virginia §46.2-1317, or at the specific request of a vehicle owner or operator. If, for the reasons stated above, a towing service is utilized that is not on the list, it must be reported to the Communications Office for record purposes.
- (d) **Equal Call System.** Each towing service on the Tow Rotation List will have an equal opportunity to respond to police requests for towing. If the Police Department makes two (2) attempts to contact an authorized towing service and receives no answer or a busy signal on both attempts, the next business on the list will be called. If a towing service refuses to respond to a request, or responds but is deemed unfit to proceed by an officer at the scene, they will lose their turn in the rotation and fall to the bottom of the list. In the event a towing service responds to a call but does not provide service due to no fault of its own, that business will be placed back on the top of the Tow Rotation List.

SECTION 14-160. TOWING AND RECOVERY ADVISORY BOARD.

- (a) A Towing and Recovery Advisory Board shall be created pursuant to §46.2-1217 and §46.2-1233.2 of the Virginia Code. The purpose of the Towing and Recovery Advisory Board shall be to:
 - (1) Study the governing practices of towing and recovery services rendered pursuant to police towing requests;
 - (2) Make recommendations to City Council and the Winchester Police Department regarding adoption or amendment of any ordinance, regulation, or contract pertaining to the same;
 - (3) Hear appeals and complaints arising from police towing requests;
 - (4) Periodically review fees charged by authorized towing services to allow for timely adjustment of fee limitations implemented pursuant to §46.2-1233.1 of the Code of Virginia.
- (b) The Board shall consist of three (3) members appointed by City Council, including one (1) representative from a local law enforcement agency, one (1) representative of a licensed towing and recovery operator, and one (1) member of the general public. The

Board shall meet at least once per year at the call of the Chairman, who shall be elected annually by a majority vote of the voting members of the Board.

SECTION 14-161. DUTIES AND REQUIREMENTS OF AUTHORIZED TOWING SERVICES.

- (a) Safety. Authorized towing services responding to police requests shall tow vehicles in a manner that does not cause damage to the vehicle and that uses the safest and most direct route. The towing service shall remove all litter, glass, and debris caused by incidents necessitating towing, excluding the contents of a load carried by a private or commercial truck, van, or similar vehicle.
- (b) License and Registration. Authorized towing services shall comply with all applicable federal, state, and local laws, including but not limited to, the securing of all necessary federal, state, and local licenses and payment of registration fees. All authorized towing services shall display a WT-TAG (“Tow Truck for Hire”) or a Virginia apportioned tag while maintaining \$1,000,000.00 in liability insurance. All authorized towing services must be current in all financial obligations to the City including all tax and license obligations.

All towing operators shall possess a valid Virginia Driver’s License or Commercial Driver’s License (as may be required by law) and shall be qualified to operate the tow vehicle and its equipment. Authorized towing services shall ensure that all employees participating in towing operations meet these requirements.

- (c) Insurance. Prior to entering into a Towing Service Agreement, a towing service must provide the Chief of Police with evidence of the following insurance coverage for the duration of the proposed agreement:
 - (1) Garage Keeper’s Legal Liability Insurance in the minimum amount of \$75,000.00 to cover fire, theft, windstorm, vandalism, and explosion for each lot (\$200,000.00 for towing services on the Heavy-Duty Rotation List);
 - (2) Insurance sufficient to cover any and all claims of loss, damage, or bodily injury resulting from its acts or incurred in the operation of the towing service’s equipment and vehicles in the amount required by the state (vehicle liability policy);
 - (3) Insurance sufficient to cover claims under the Worker’s Compensation Act, if applicable, for all employees. If any work will be sublet due to a need for specialized equipment, the subcontractor shall provide similar coverage; and
 - (4) A Certificate of Insurance listing the City as an additional insured on its policy.
- (d) Service. All authorized towing services shall provide service twenty-four (24) hours a day, 365 days a year, and shall have available at all times a sufficient number of qualified

personnel to effectively receive calls and to respond to towing requests using only their own equipment and personnel. All authorized towing services shall have a business card which contains the name of the business, a physical address, telephone number, and after-hours telephone number if necessary.

(e) Regular Towing Equipment. All equipment used by authorized towing services must be in good working order, and the use of equipment from another towing firm, regardless of ownership, is prohibited. Authorized towing services shall have at least one regular tow truck and one rollback to perform services under this Article. The rollback must have at least an eight thousand (8,000) pound winch and a deck rating of a minimum seven thousand (7,000) pounds, which shall be maintained in good condition with Virginia license plates, current Virginia inspection stickers, and an SCC license. The towing business name, address, and telephone number must be printed on both sides of the towing vehicle in letters and numbers of such size, shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is not in motion. All towing vehicles, including heavy-duty wreckers, must be equipped with the following:

- (1) A chassis rated with sufficient gross vehicle weight to match the maximum capacity of the crane mounted thereon;
- (2) One (1) five-pound ABC or one (1) ten-pound ABC fire extinguisher;
- (3) Two (2) operable amber revolving or flashing emergency lights, mounted on the highest part of the vehicle and visible from all sides;
- (4) One (1) heavy-duty street broom and one (1) shovel; and
- (5) Liquid absorbent source for small clean-ups.

(f) Heavy-Duty Towing Equipment. Towing services included on the Heavy-Duty Tow Rotation List shall make available a heavy-duty wrecker, equipped with a wrecker crane capable of lifting at least 50,000 pounds and capable of towing at least 80,000 pounds. It shall be equipped with:

- (1) A wheel lift or under-reach of sufficient size to tow all types of trucks, tractors, and trailers without damage;
- (2) A heavy-duty sling;
- (3) Air brakes; and
- (4) An auxiliary air supply capable of tying into the air brakes of the disable vehicle to enable safe towing under the braking control of the wrecker.

(g) Response Time. Time is of the essence in the performance of services. The authorized towing service shall arrive on the scene within thirty (30) minutes of receiving a call, with a grace period of ten minutes if requested by the towing service within the first twenty-five (25) minutes. If such time limit is not met, the request will be considered cancelled, and an officer may request service from the next authorized towing service on

the list. In such an event, neither the City nor the vehicle owner shall be liable for any payment to the initial towing service. Heavy-duty towing services are exempt from this requirement, provided they notify the law enforcement agency within the first twenty-five (25) minutes of receiving a call and arrive in a reasonably timely manner.

Authorized towing services will not be responsible for unavoidable delays caused by circumstances such as natural disasters or Acts of God. However, if the Chief of Police deems that excessive delays are the result of circumstances within the control of the towing service, including but not limited to negligence, lack of manpower, and poorly conditioned equipment, he or she may suspend and/or terminate the towing service from the Towing Rotation List.

If a tow truck is not available or the authorized towing service cannot respond within the time required, the towing service shall immediately notify the dispatcher and explain the reason why. If upon arrival at the towing scene, the towing and recovery operator determines that the responding towing vehicle will not be sufficient for the task, the towing service will be permitted to retrieve additional equipment, provided it is able to respond within the thirty (30) minute time period required.

- (h) Storage and Security of Vehicles. All authorized towing services shall have a secured lot for storage of vehicles located within the City of Winchester or within five (5) miles of the City of Winchester. Storage lots located in the City must meet off-street parking area surface requirements of the Winchester Zoning Ordinance, however a storage facility allowing for the inside storage of vehicles is also permissible. A sign must be conspicuously posted at the lot or facility identifying the towing firm's name and telephone number. The space available in a lot shall be a minimum of 1,500 feet. Share lots are permitted, so long as each towing service sharing the lot meets the minimum space requirement of 1,500 feet.

SECTION 14-162. LIABILITY AND PROHIBITED ACTS.

- (a) Prohibited Acts. Violation of any provision of this section may subject the towing service to temporary or permanent removal from the Tow Rotation List, as well as possible termination of the Towing Service Agreement. Violations shall include, but are not limited to:
- (1) Deliberate failure of a towing business to respond to a call after accepting it;
 - (2) Securing a Towing Service Agreement by fraud or concealment of a material fact which, if known, would cause the application to be rejected;
 - (3) Violation of the Towing Service Agreement;
 - (4) Chronic or repeated violations, even if minor in nature, of this Article, and/or;
 - (5) A single, serious violation of this provision, including but not limited to:
 - a. Soliciting business at the scene of accidents;
 - b. Knowingly charging excessive fees for services, or charging for services not rendered in violation of §46.2-118;

- c. Alcohol or drug use;
- d. Repeated failure to take a call and/or failing to respond to calls in a timely manner;
- e. Failure to notify the Chief of Police of immediate changes regarding insurance, or the taking on of a new partner(s), owner(s), agent(s), corporate officer(s), or any other material changes to information disclosed in the application for a Towing Service Agreement;
- f. Failure to remain current in financial obligations to the City;
- g. Failure to comply with the requirements of this Article.

Unauthorized Provision of Towing Service. No towing service shall respond to an accident for the purpose of towing vehicles unless specifically called there by the Police Department, other law enforcement personnel, or the person involved in the accident or emergency. Violation of this section shall result in suspension from the towing list for thirty (30) days for the first offense, sixty (60) days for the second offense and permanent removal from the Tow Rotation List for the third offense.

- (b) Liability. All authorized towing and recovery operators entering into a Towing Service Agreement shall remain independent contractors and shall not be deemed to be employees of the City. Any such operator utilized in response to a police request shall indemnify and hold free and harmless the City for any costs and expenses, including but not limited to, attorneys' fees, reasonable investigative and discovery costs, court costs, and all other sums which the City, its agents, employees, and representatives may pay or become obligated to pay on account of any, all, and every demand for claim or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of an act or omission of the towing and recovery operator, its agents, employees, owners, officers, or directors.

SECTION 14-163. FEES AND COMPENSATION.

(a) Maximum Fees. An authorized towing service, in accordance with §46.2-118, must have readily available at their principal office, upon request, information on the maximum fees normally charged for basic services, including the towing and initial hookup of vehicles. The hookup and initial towing fee of a vehicle without the consent of the vehicle owner or operator shall not exceed one hundred and fifty dollars (\$150.00), however the City may set reasonable limits on fees charged for the removal of vehicles from private property in violation of §46.2-1231 and 1215 if the fair market value of such removal is taken into consideration.

(b) Storage Fee. An authorized towing service may charge fifty dollars (\$50.00) a day for the storage of a towed vehicle; however there shall be no charge for the first twenty-four hours of vehicle storage for vehicles towed in accordance with §46.2-1233.1 of the Code of Virginia. An administrative fee of ninety dollars (\$90.00) may be charged for long-term storage exceeding seventy-two (72) hours.

(c) Record of Fees Charged. The towing service shall issue an itemized receipt for payment for towing and storage services to the owner of the towed vehicle. Said receipt shall include a signature line where the owner of the vehicle may acknowledge receipt of the vehicle and acceptance of the fees charged.

SECTION 14-164. RECORDS AND INSPECTIONS.

(a) Inspections by Chief of Police. All tow vehicles, required equipment and storage facilities utilized by authorized towing services on the Tow Rotation List shall be inspected and approved by the Chief of Police prior to initial use. The Chief of Police may periodically inspect any tow trucks, equipment, and storage facilities used under this Article. The tow truck inspection shall take place at a location designated by the Chief of Police. There will be an annual inspection of all tow trucks, equipment, and storage facilities, for which a fee of fifty dollars (\$50.00) will be charged for each vehicle inspected. Such annual inspection shall occur on or about the anniversary date of the approval of the towing service's application. If a towing service changes the location of its storage facility, a new inspection must be conducted prior to approval of the new facility.

The Chief of Police shall give the towing service written notice if a vehicle or storage facility is found to be unacceptable. Unacceptable tow trucks, equipment and/or storage facilities may not be used in the performance of duties under a Towing Service Agreement until replaced, repaired, or otherwise brought into compliance and approved by the Chief of Police. Failure to comply with this provision shall result in suspension of the towing service from the Tow Rotation List until the necessary corrections have been made.

(b) Inspection of Stored Vehicles. Upon receiving a request to release or permit an inspection of a stored or seized vehicle from the owner, operator, other authorized person during other than normal business hours, a towing service may require one hour's notice for the release of such vehicle. A fee may be charged for after-hours access to the vehicle for purposes of inspection, release, or retrieval of property; however such fees shall be reasonable in light of fees charged by other towing services in the City for comparable service.

(c) Responsibility to Vehicle Owner. Towing services shall comply with the rights of owners of vehicles as set forth in the Code of Virginia §46.2-1217. Towing services must allow for the retrieval of personal property from the vehicle and shall not require that payment for towing and storage be rendered prior to providing such access to the vehicle owner or operator. Additionally, authorized towing services shall be responsible for vehicle(s) towed, including any contents within, from the time the vehicle is towed until the occurrence of one of the following:

(1) The vehicle is delivered to a location specified by the owner or other authorized person;

- (2) The vehicle and property is released to and accepted by the owner or authorized person in the condition as originally towed. A facsimile authorization shall be acceptable as a form of release from the owner of the vehicle along with a photocopy of photo identification; or
- (3) The vehicle is otherwise disposed of according to law.

(d) Records. All authorized towing businesses shall keep records of all vehicles towed pursuant to the Towing Service Agreement. These records shall include, at a minimum, the date and time of the tow, the vehicle's license number and state of issue, the model and color of vehicle, the location from which it was towed, the charges for towing and storage, the disposition of the vehicle and the date of disposition, and an inventory of any items of value. Such records shall be retained for at least twelve (12) months following the date of tow, and shall be available for inspection by the Chief of Police during the towing service's normal business hours.

(e) Release and Disposition of Vehicle. An attendant must be on duty between the hours of 8:00AM and 5:00PM every Monday through Friday, with the exception of holidays, to permit inspection or release of stored vehicles. After hours, the owner or attendant must be available by telephone. If an owner or lien holder fails to claim any vehicle or if a towing service wants to satisfy any lien which it has on a vehicle, it shall be the towing service's responsibility to dispose of or sell the vehicle in compliance with the Code of Virginia. Towing services shall not release any vehicle designated as "seized" or "seized for forfeiture" by the Police Department or other law enforcement agency until the towing service obtains permission from the requesting agency. The towing service shall bill the requesting agency for the cost of the tow and storage.

SECTION 14-165. COMPLAINTS.

Complaints resulting from a failure to adhere to proper towing procedure, as outlined in the standard Towing Service Agreement, shall be handled as any other citizen complaint. This may include direction of the complaint through the applicable chain of command, to the Chief of Police, or to the Towing Advisory Board. Authorized towing services must agree to abide by decisions rendered by the Chief of Police and the Towing Advisory Board in response to and resolution of complaints.

SECTION 14-166. AMENDMENTS TO ORDINANCES.

The Towing Advisory Board is authorized to recommend revisions to this section. Revisions shall be effective from the date on which they are adopted by the City Council, unless otherwise provided. Towing businesses on the Tow Rotation List shall be given written notification of any changes ten (10) days prior to the revision being adopted. They may cancel their participation on the Tow Rotation List if they do not wish to accept the revision. Cancellations must be submitted in writing to the Chief of Police.

Ordinance No. 2014-04

ADOPTED by the Common Council of the City of Winchester on the 8th of April, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest, CMC
Deputy Clerk of the Common Council*