

**ORDINANCE NUMBER 644-2008**

**AN ORDINANCE OF THE CITY OF DICKINSON, TEXAS, REPEALING ORDINANCE NUMBERS 523-97, 529-2004 AND 564-2005, ALL BEING CODIFIED AS ARTICLE V, AUTO WRECKERS, OF CHAPTER 8, LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY; ADOPTING A NEW ARTICLE V, TOW TRUCKS, OF CHAPTER 8, LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES TO ESTABLISH RULES AND REGULATIONS GOVERNING THE TOWING OF VEHICLES WITHIN THE CITY; PROVIDING OTHER MATTERS ON THE SUBJECT; REPEALING ALL OTHER ORDINANCES OR PARTS THEREOF INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND SAVINGS; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED FIVE-HUNDRED DOLLARS (\$500.00) FOR ANY VIOLATION OF THE PROVISIONS OF THIS ORDINANCE, WITH EACH DAY OF VIOLATION CONSTITUTING A SEPARATE OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on September 23, 1997, by Ordinance Number 325-97, on June 22, 2004, by Ordinance Number 529-2004, and on November 8, 2005, by Ordinance Number 564-2005, the City of Dickinson, Texas ("City"), adopted rules and regulations governing the towing of vehicles within the City in accordance with the Federal Aviation Administration Act of 1994 ("the Act") and the laws of the State of Texas, and such ordinances were codified as Article V, Auto Wreckers, of Chapter 8, Licenses and Business Regulations, of the Code of Ordinances of the City; and

**WHEREAS**, the Texas Legislature adopted significant new statutory regulations governing the towing of vehicles, tow trucks, tow truck drivers, and vehicle storage facilities; and

**WHEREAS**, the City of Dickinson desires to update its regulations regarding the towing of vehicles, tow trucks, tow truck drivers, and vehicle storage facilities to remain consistent with Texas law; and

**WHEREAS**, additionally, the City desires to revise the process by which towing companies are chosen to provide service within the City; and

**WHEREAS**, the City Council of the City hereby finds that the regulations contained in this ordinance are in the best interest of the health, safety, and welfare of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DICKINSON, TEXAS, THAT:**

**Section 1.** The facts and matters set forth in the preamble to this Ordinance are hereby found to be true and correct.

**Section 2.** The following Ordinances are hereby repealed in their entirety:

- (a) Ordinance Number 325-97, duly passed and approved on September 23, 1997.
- (b) Ordinance Number 529-2004, duly passed and approved on June 22, 2004.
- (c) Ordinance Number 564-2005, duly passed and approved on November 8, 2005.

**Section 3.** Article V, Auto Wreckers, of Chapter 8, Licenses and Business Regulations, of the Code of Ordinances of the City of Dickinson is hereby deleted in its entirety.

**Section 4.** Chapter 8, Licenses and Business Regulations, of the Code of Ordinances of the City of Dickinson is hereby amended by the adoption of a new Article V to be entitled "Tow Trucks" and to read in its entirety as follows:

## **"ARTICLE V. TOW TRUCKS**

### DIVISION 1. GENERALLY

#### **Sec. 8-131. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them below, except where the context of their usage clearly indicates otherwise:

*Consent tow* shall mean 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 traffic incident that involves the vehicle.

*Heavy-duty tow truck* shall mean a tow truck with a manufacturer's rated carrying capacity of not less than six-thousand (6,000) pounds. Except where a distinction is made, the term "tow truck" shall include a "heavy-duty tow truck."

*Non-consent tow* shall mean any tow of a motor vehicle that is not a consent tow.

*Police-authorized tow* shall mean the towing of a motor vehicle authorized by a police officer of the city rather than the owner or operator of the motor vehicle under circumstances of recovery of a stolen vehicle, removal of an abandoned, wrecked, illegally parked or disabled motor vehicle, or custodial arrest where the owner or operator of the vehicle is incapable of making arrangements for removal of the vehicle, and any other circumstances in which a police officer of the city authorizes the towing of

a motor vehicle in connection with the officer's official duties and the owner or operator of the motor vehicle is not present or is not capable of making a determination with respect to the removal of a vehicle.

*Tow truck* shall mean a motor vehicle, including a tow truck, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term "tow truck" shall not be construed to include a service car or other vehicle not equipped with a mechanical device for transporting wrecked or disabled vehicles and not used for such purpose, such as service cars equipped with compressed air containers and tools for performing minor repairs not involving the towing or transporting of wrecked or disabled vehicles or vehicles used by citizens on rare occasions to push or pull another vehicle.

*Towing company* shall mean an individual, association, corporation, partnership, company, or any 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 this state.

*Tow truck driver* shall mean a person who operates a tow truck on the streets of the city or the public roadways of this state, whether on his own account or in the employ of another.

*Transfer and service permit* shall mean a permit issued annually by the city which authorizes the holder thereof to perform consent tows.

*Unlimited towing permit* shall mean a permit to be issued annually by the city which authorizes the holder thereof to answer calls from the police for police-authorized tows pursuant to police-authorized tow agreement, as well as all other non-consent tows and all consent tows.

*Vehicle storage facility* shall mean a storage facility, as defined by Section 2303.002 of the Texas Occupations Code, that is operated by a person who holds a license issued pursuant to Chapter 2303 of the Texas Occupations Code to operate the facility.

### **Sec. 8-132. Consent tows.**

(a) An owner or person in possession of a motor vehicle may at any time request that their vehicle be towed to any location, for any purpose, and may use any tow truck they desire to tow their motor vehicle as long as the tow truck meets the following requirements:

- (1) The tow truck displays a valid tow tag and license issued by the State of Texas Commission of Licensing and Regulation as required by Chapter 2308 of the Texas Occupations Code; and

- (2) If the owner of the tow truck has a place of business located within the city, the tow truck shall display a valid transfer and service permit issued by the city.

**Sec. 8-133. Non-consent tows.**

(a) A tow truck or towing company performing non-consent tows within the city must have a valid tow tag issued by the State of Texas Commission of Licensing and Regulation as required by Chapter 2308 of the Texas Occupations Code.

(b) Whenever a person other than the registered owner or person in possession of a motor vehicle, including a registered lienholder of the motor vehicle, authorizes the tow of a vehicle, that person or his agent shall make an oral report to the police department within one (1) hour of the time the vehicle was towed which shall include the following information:

- (1) The license plate of the towed vehicle;
- (2) The vehicle identification number of the towed vehicle;
- (3) The year, make, model, and color of the towed vehicle;
- (4) The name, address and telephone number of the person authorizing the tow or the lienholder requesting the vehicle to be repossessed; and
- (5) The location from which the vehicle was towed, the date and time of the tow, and the name, street address, and telephone number where the vehicle was taken for storage.

**Sec. 8-134. Police-authorized tows.**

(a) No tow truck driver or towing company may perform police-authorized tows within the city except upon authorization of a contract executed under this section.

(b) The city shall enter into police-authorized tow agreements with no more than four (4) towing companies to be determined by the City Council. Any towing company desiring to enter into a police-authorized tow agreement with the city shall respond to a request for proposal (RFP) issued by the city. Requests for proposal shall be evaluated by the chief of police and a recommendation shall be made to the City Council, which shall make the final selection. The final selection of towing companies with which the city will enter into a police-authorized tow agreement shall be made on a nondiscriminatory basis evaluating factors including, but not limited to, proposed tow fees, past history of service with the city, and ability to provide service on a timely basis.

(c) No towing company or tow truck driver shall be permitted to submit a response to a request for proposal provided herein if the applicant or any employee or

owner of the applicant (including partners of a partnership and stockholders of a corporation) has had an agreement hereunder terminated for cause within the preceding five (5) years. The foregoing provision shall apply to agreements that are not renewed or are terminated by the operator under threat of termination for cause in the same manner as those that have actually been terminated for cause.

**Sec. 8-135. Parking upon arrival.**

Whenever a tow truck arrives at a place where a motor vehicle is wrecked or disabled, the tow truck driver shall park his vehicle as close to the street curb as possible and otherwise dispose of it in such a manner as not to interfere with traffic. No tow truck shall be parked within one hundred (100) feet of a wrecked or disabled vehicle unless otherwise directed by a police officer at the scene. The driver or any occupant of the tow truck shall remain at or near the tow truck and not approach any party involved in the wrecked or disabled vehicle. Only one (1) tow truck from the same company shall be allowed at the scene of a wrecked or disabled vehicle or at the scene of any police call for tow trucks.

The fact that a police officer is not present at the scene of an accident when a tow truck arrives shall not constitute an exception to this section nor any other section, and it shall be the duty of the owner or driver desiring to tow or haul any wrecked or disabled vehicles from the scene of an accident to cause the police to be notified of the occurrence of the accident and to await the arrival of a police officer.

**Sec. 8-136. Igniting matches or smoking at scene of accident.**

No tow truck driver shall, nor allow any person under his control to, ignite a match, lighter or other flammable object within a distance of fifty (50) feet in any direction from the location of a vehicular accident. The tow truck driver and any person under his control shall not enter into such area with a lighted cigarette, cigar, pipe, or other burning material. The provision of this section shall no apply to the required safety equipment described in Section 8-139.

**Sec. 8-137. Obedience to, interference with police officers.**

(a) All tow truck drivers arriving at the scene of an accident or any police-authorized tow shall obey all lawful orders given them by any police officer at the scene and shall not interfere with such police officer in the performance of his or her duties.

(b) A tow truck driver shall not remove any wrecked or disabled vehicle from the scene of an accident or any request for a police-authorized tow or load or attach a tow truck to a wrecked or disabled vehicle until the police officer in charge of the scene has completed the investigation and authorized the tow truck driver to remove the vehicle.

(c) A tow truck may be denied to match for a tow if the tow truck is observed violating any laws of the State or City while en route to any tow truck call for service. This shall be at the discretion of the investigating police officer in charge of the scene.

(d) Any officer may confiscate a city tow truck driver's license if the tow truck driver interferes with the officer while at the scene. If any tow truck driver's license is confiscated, it shall be accompanied by a written memo indicating the reason for the confiscation and given to the on-duty supervisor. The supervisor shall then forward the confiscated item, along with a memo, to the chief of police or his designee. The chief of police shall investigate or cause an investigation to be conducted as to any further disciplinary action such as revoking or suspending the tow truck driver's license or terminating the police-authorized tow agreement, if any, or both.

**Sec. 8-138. Designation of towing company.**

(a) Upon arrival at the scene of a wrecked or disabled vehicle the police officer shall determine if a police-authorized tow is necessary. If a police-authorized tow is necessary, the police officer shall advise dispatch and a rotation list shall be utilized to dispatch the required number of tow trucks to the scene.

(b) If the owner or driver of a motor vehicle that is wrecked or disabled has a tow truck preference, that request will be honored if it would not cause undue delay and immediate towing is unnecessary. Any towing company may tow the vehicle at the owner's or driver's request as long as it has a valid license issued by the State of Texas Commission of Licensing and Regulations as required by Chapter 2308 of the Texas Occupations Code. If the wrecked or disabled vehicle has any part or portion thereof upon the roadway, the tow truck responding to the owner's or driver's request shall have fifteen (15) minutes to arrive at the scene and remove the vehicle, or such shorter period of time if in the discretion of the police officer on the scene such shorter period of time is necessary to protect the safety and welfare of the public; otherwise, the vehicle may be towed pursuant to a police-authorized tow.

**Sec. 8-139. Required equipment.**

The following equipment is required on every tow truck performing police-authorized towing services with the city:

- (1) Fire extinguisher(s), being defined as that piece of equipment commonly carried to extinguish fires caused as a result of an auto accident or collision. Such fire extinguisher shall be the standard BC type, either one(1) ten-pound or two (2) five-pound fire extinguishers with a gauge, properly filled and readily accessible for use.
- (2) Three (3) flares, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime.

- (3) One (1) broom of a type designed for pushing with an 18-inch head and a handle of not less than 36 inches.
- (4) No less than five (5) gallons of dry sand or other absorbent which is at least as effective as sand in absorbing liquid.
- (5) One (1) five-gallon container to carry glass and debris cleaned from streets when picking up a wrecked vehicle.
- (6) One (1) flat-edged shovel of at least nine (9) inches, with a handle of not less than 36 inches.
- (7) One (1) wrecking bar of not less than 36 inches in length with a wedge head.
- (8) If the vehicle being towed does not have functional taillights, temporary lighting must be provided.
- (9) If the tow truck is a heavy-duty tow truck, the heavy-duty tow truck must be equipped with a winch capable of lifting a minimum of 30,000 pounds. If one (1) winch line is used, it shall be at least  $\frac{3}{4}$  inches in diameter. If two (2) winch lines are used, each shall be at least  $\frac{5}{8}$  inches in diameter. Additionally, a heavy-duty tow truck shall be equipped with an "A" frame capable of being used for lifting vehicles, trucks, trailers or equipment, air brakes and air lines, and must have a tow bar that is sufficient to prevent the swinging of any equipment being transported by such heavy-duty tow truck.

**Sec. 8-140. Clearing debris.**

(a) It shall be the duty of the tow truck driver of each tow truck that picks up a wrecked or disabled vehicle for the purpose of towing to clear the street of any and all debris, parts, or glass. In the event two (2) or more tow trucks pick up vehicles for towing, it shall be the duty of each tow truck driver to clear the street of debris, parts, or glass.

(b) Any other person who removes a wrecked or disabled vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle.

**Sec. 8-141. Charges, police-authorized and non-consent tows.**

(a) The standard service charge for towing a vehicle as a non-consent tow shall not exceed the maximum rate established by the State for a city that does not

regulate fees that may be charged or collected for a non-consent tow of a vehicle from private property.

(b) If the police department requires a vehicle to be towed or the vehicle to be moved from the location to which it was originally towed to another location within the city, the city-licensed tow truck driver may charge and collect a fee for the tow of such vehicle not to exceed that provided by the towing company's or tow truck driver's agreement executed under Section 8-134 above and/or city resolution.

(c) All charges shall be listed on the towing invoice and the permit holder shall maintain a separate file for invoice copies pertaining to non-consent and police-authorized towing services for a period of two (2) years from the invoice date. Any officer of the police department may inspect such invoice(s) during regular business hours. Every invoice required to be kept under this section shall contain the towed vehicle's description by make, model, year, license number, and name of the tow truck driver in addition to charges incurred. Every invoice on non-consent tows shall include the above information along with the name, address, and phone number of the person authorizing the tow, accompanied with the reason the vehicle was towed, and the name, street address, and telephone number where the vehicle was taken for storage. Every invoice for police-authorized tows shall also include the name and badge number of the police officer who authorized the tow.

(d) Before January 31 of each year, a towing company shall file with the city police department a schedule showing each fee that the towing company charges or collects in connection with a non-consent tow.

(e) Any towing company authorized to perform non-consent tows in the city may request that the city perform a towing fee study pursuant to Section 2308.203 of the Texas Occupations Code by filing, in writing, with the police chief a request for the city to perform a towing fee study. Upon conclusion of the towing fee study, the city council shall amend the fee allowed for non-consent and police-authorized tows at amounts that represent the fair market value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

## DIVISION 2. PERMITS

### **Sec. 8-142. Required classes.**

(a) It shall be unlawful for any person who has a place of business located within the city or displays a business name and address located within the city to drive, operate, or cause to be driven or operated any tow truck upon any public street in the city for the purpose of towing or hauling wrecked or disabled vehicles to or from any location in the city, for hire, or as an incident to obtaining the business of storing, wrecking or repairing such wrecked or disabled vehicles for any purpose, without having first obtained a permit from the city.

(b) It shall be unlawful for any person to drive, operate, or cause to be driven or operated any tow truck upon any public street in the city for the purpose of towing or hauling wrecked or disabled vehicles to or from any location in the city, for hire, or as an incident to obtaining the business of storing, wrecking or repairing such wrecked or disabled vehicles or for any purpose, if such towing or hauling is performed without the consent of the vehicle owner or the person in possession of the vehicle without having first obtained a permit from the city.

(c) There shall be two (2) classes of permits:

(1) Transfer and service permit:

A. Permits the owner of such permit to respond to consent tows within the city. A transfer and service permit shall only be required to perform consent tows within the city if the towing company or owner or operator of the tow truck has a place of business within the city.

(2) Unlimited towing permit:

A. Permits the holder to respond to consent and non-consent tows within the city and to be eligible to enter into a police-authorized tow agreement pursuant to the procedures set forth in this article.

(d) Each permit issued pursuant to this section shall expire on December 31 of each calendar year unless sooner revoked or terminated.

**Sec. 8-143. Application.**

(a) Any person desiring to operate an tow truck in the City shall apply in writing for a permit to the chief of police and shall state the following in the application:

(1) The name and address of the applicant. If an individual, the application shall so state. If a partnership, the partnership name and address shall be given together with the names and addresses of all partners. If a corporation, the corporate name and office address shall be given, together with the names and addresses of the president and secretary;

(2) The number of tow trucks an applicant desires to operate, listing the make, model, motor number, state tow tag number, and state license number for each tow truck; and

(3) Whether the applicant desires a transfer and service permit or an unlimited towing permit.

**Sec. 8-144. Fee.**

The application for an annual permit required by the provisions of this Article shall be accompanied by a permit fee established by resolution of the City Council.

**Sec. 8-145. Insurance.**

(a) Before any permit shall be issued under the provision of this Article or before any renewal of such permit shall be granted, the application or permittee shall be required to file with the chief of police or his designee, and keep in full force and effect, satisfactory evidence that the applicant or permittee has given proof of financial responsibility to the Texas Department of Public Safety as defined in the Texas Motor Vehicle Safety Responsibility Act (*Texas Transportation Code §601.002 et seq.*) and has complied with the provisions of such Act, as now enforced or hereafter amended.

(b) The chief of police or his designee is authorized to promulgate reasonable regulations as to the type and character of evidence that shall be required to show that the applicant or permittee has made proof of financial responsibility to the Texas Department of Public Safety. If such proof of financial responsibility is evidenced by an insurance policy, such policy shall be carried with an insurance company admitted to do business in the State of Texas and performable in Galveston County. The chief of police or his designee shall suspend, cancel, or revoke any tow truck permit, without further notice to the applicant or permittee, if financial responsibility is not in full force and effect at any time during the permit.

(c) The insurance required by this section shall be of limits of not less than the minimum required by State law. Proof of insurance shall be in the form of a "Certificate of Insurance" issued to the city and must be submitted in response to a Request for Proposal issued by the City pursuant to Section 8-134 above.

**Sec. 8-146. Issuance of permit.**

After an applicant has filed an application for a transfer and service permit, an unlimited towing permit, or a towing company has been selected by the city council pursuant to a Request for Proposal issued by the City pursuant to Section 8-134, has remitted the appropriate permit fee, and submitted a certificate of insurance, and the chief of police or his designee has examined the same and found them to be in compliance with the terms of this Article, and the chief of police has approved the application, the chief of police or his designee shall issue to the towing company the appropriate permit to operate a tow truck in the city.

**Sec. 8-147. Contents.**

Every permit issued under the provisions of this Article shall be dated and numbered, shall bear upon its face a notice that the same expires on December 31 of

each year, and shall show the make, model, motor number, and state license number of each tow truck permitted to operate within the city, and where the operator has entered into a police-authorized tow agreement with the city, the tow truck decal or license tag given to it by the chief of police.

**Sec. 8-148. Additional vehicles.**

(a) When an applicant has obtained a tow truck permit and thereafter desires to increase the number of tow trucks to be operated, the permit holder shall file a supplemental application setting forth the permit number and the fact that he desires to operate additional tow trucks, giving the make, model, motor number, state tow tag number, and state license number of each additional tow truck. The permit holder shall also file the proper permit fee to cover the additional number of tow trucks.

(b) The permit holder shall also file a new certificate of insurance covering the additional tow trucks with the chief of police or his designee.

(c) The chief of police or his designee shall examine such supplemental tow truck applications, fees, and certificates of insurance and, if the same are found to be in compliance with the terms of this Article, shall issue a supplemental permit covering the additional tow trucks.

(d) There will be no limit on the number of permits issued to any one (1) applicant, whether the permits are transfer and service or unlimited.

(e) Tow truck drivers shall be allowed to increase the number of tow trucks operated pursuant to a police-authorized tow agreement by complying with the provisions of this section and the provisions of such agreement. If the application is approved, a decal or license tag will be issued for each additional tow truck.

**Sec. 8-149. Replacement of vehicle.**

Whenever a permittee wishes to discontinue the use of a tow truck during the period covered by a permit and replace such tow truck with another, the permittee shall file an affidavit stating that the use of the tow truck covered by the permit has been discontinued, and the permittee desires to use another tow truck in its place. A certificate from the permit holder's surety or insurer shall be attached to the affidavit evidencing that such surety or insurer has been notified thereof and agrees thereto. The chief of police or his designee shall then issue to the permittee a supplemental permit covering the new tow truck and cause the description of the old tow truck to be canceled from the original permit. In the affidavit, certificate from the surety or insurer, and supplemental permit, the old and new tow trucks shall be described by make, model, motor number, state tow tag number, state license number, and decal or license tag, if applicable.

**Sec. 8-150. Rules; regulations.**

The chief of police or his designee is empowered to prescribe regulations for the displaying of signs on tow trucks showing that the same have been licensed as herein provided. The name, physical address, and telephone number of the permit holder shall be clearly visible and shall, at a minimum, meet the following requirements:

- (1) The name and telephone number of the permit holder shall be in letters three inches (3") in height and located on the doors of the tow truck.
- (2) The physical address of the permit holder shall be two inches (2") in height and located on the doors of the tow truck.

**Sec. 8-151. Expiration.**

All permits issued under the provisions of this Article are nontransferable and shall expire on December 31 of each year. Applications for renewal and the renewal fee must be received no later than December 1 of each year. Failure to submit an administratively complete application and renewal fee by December 1 of each year shall result in the denial of the application for permit.

**Sec. 8-152. Revocation.**

A permit issued under the provisions of this Article may be denied, suspended, canceled or revoked by order of the chief of police for any of the following reasons:

- (1) The permit holder has not been in compliance with the requirements of this Article at any time since the permit has been issued;
- (2) The permit holder has committed any violation of state law regulating tow trucks;
- (3) The permit holder has committed any violation of the ordinances regulating tow trucks;
- (4) The permit holder has violated any rules or regulations issued by the authority of the chief of police;
- (5) There have been three (3) or more violations of the ordinances regulating tow trucks within any one (1) year period by any one driver operating a tow truck of the permit holder or by any other agents or employees of the permit holder;
- (6) There have been four (4) or more moving violations of the motor vehicle laws of the State of Texas within any one (1) year by any one driver while operating a tow truck of the permit holder;

(7) The permit holder knowingly supplies false or incomplete information to obtain or maintain a permit;

(8) The permit holder has been convicted of a felony within the last three (3) years, placed on probation, or convicted of a crime involving moral turpitude within ten (10) years; or

(9) The permit holder, his agent or employee fails to respond to tow truck calls from the police department in such a manner as to create unnecessary delays in the removal of wrecked or disabled vehicles from the roadway.

**Sec. 8-153. Appeal.**

An applicant for a permit under this Article shall have the right to appeal the decision of the chief of police to the city council within ten (10) calendar days, which appeal shall be perfected by delivering, in writing, seven (7) copies of the same to the city secretary for the city council, stating that an appeal from the decision of the chief of police is desired and the facts regarding same. The city council will schedule a hearing as soon as practicable after receiving such notice of appeal, grant a hearing thereof, and after the hearing of the appeal, shall within five (5) business days, sustain or reverse the decision of the chief of police. If no appeal of the findings of the chief of police is perfected within the time provided above, the decision of the chief of police shall be final; otherwise, the decision of the city council shall become final.

**Secs. 8-154 – 8.160. Reserved.**

DIVISION 3. TOW TRUCK DRIVERS

**Sec. 8-161. State operator's license required.**

It shall be unlawful for any person to drive a tow truck within the city unless such person holds a valid towing operator license issued by the Texas Department of Licensing and Regulation.

**Sec. 8-162. City license required.**

It shall be unlawful for any person to operate or drive a tow truck to perform non-consent or police-authorized tows unless such person has been issued and holds a valid tow truck driver's license issued by the city. It shall be unlawful for any person to operate or drive a tow truck to perform consent tows unless such person has been issued and holds a valid tow truck driver's license issued by the city if such person owns or represents a place of business located in the city.

### **Sec. 8-163. Application.**

A person desiring a tow truck driver's license required by this Article shall make a written application therefore to the chief of police or his designee, which application shall be made upon a form provided by the city and which shall contain the following information and be accompanied by the required application fee:

- (1) The full name, age, and specific address of the applicant;
- (2) The full name of the person or owner for whom the applicant proposes to be employed;
- (3) The citizenship and length of residence of the applicant in the United States;
- (4) A full personal description of the applicant, including age, height, size, race, color of eyes, complexion, color of hair, body and facial marks, defects, and full fingerprints;
- (5) A statement of whether the applicant has been convicted of a felony and, if so, full information concerning the same;
- (6) A statement of whether the applicant has been convicted of a misdemeanor involving moral turpitude, and, if so, full information concerning the same;
- (7) A statement of whether the applicant has been convicted of moving violations under the motor vehicle traffic laws of the State of Texas and, if so, full information concerning the same; and
- (8) The number and date of issuance of the state operator's license issued to the applicant.

### **Sec. 8-164. Investigation.**

The chief of police or his designee shall make or cause to be made such investigation of the applicant for a tow truck driver's license required by this Article as is necessary to determine if the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude and is fit and proper to drive and operate a tow truck within the city in a manner protective of the health and welfare of the citizens.

The tow truck permit holder or the owner of the tow truck service shall make or cause to be made such investigation into the character, experience, and qualifications of the applicant to ensure that the applicant is capable of safely and properly loading and towing motor vehicles without causing any damage to the towed vehicle or any property thereof.

**Sec. 8-165. Issuance.**

If the chief of police or his designee finds that the applicant is a fit person and properly qualified to receive a city tow truck driver's license, he shall issue the requested license.

**Sec. 8-166. Revocation, suspension or denial of tow truck driver's license.**

A license issued under the provisions of this Article may be denied, suspended, canceled, or revoked by order of the chief of police for any of the following reasons:

- (1) The applicant or licensee has not been in compliance with the requirements of this Article at any time since the license was issued;
- (2) The applicant or licensee committed any violation of state law regulating tow trucks;
- (3) The applicant or licensee committed any violation of the ordinances regulating tow trucks;
- (4) The applicant or licensee violated any rules or regulations issued by authority of the chief of police;
- (5) The applicant or licensee has more than two (2) at-fault accidents within the last three (3) years;
- (6) The applicant or licensee has more than four (4) convictions for moving violations under the motor vehicle traffic laws of the state within the last three (3) years;
- (7) The applicant or licensee knowingly supplied false or incomplete information to obtain or maintain a license; or
- (8) The applicant or licensee has been convicted of a felony within the last three (3) years, placed on probation, or convicted of a crime involving moral turpitude within the last ten (10) years.

**Sec. 8-167. Appeal.**

If the chief of police finds that the applicant or licensee is unfit to hold a tow truck driver's license, the applicant or licensee shall have the right to appeal the decision of the chief of police to the city council within ten (10) calendar days, which appeal shall be perfected by delivering, in writing, seven (7) copies of the same to the city secretary for the city council, stating that an appeal from the decision of the chief of police is desired and the facts regarding same. The city council will schedule a hearing as soon as

practicable after receiving such notice of appeal, grant a hearing thereof, and after the hearing of the appeal, shall within five (5) business days, sustain or reverse the decision of the chief of police. If no appeal of the findings of the chief of police is perfected within the time provided above, the decision of the chief of police shall be final; otherwise, the decision of the city council shall become final.

**Sec. 8-168. Identification cards.**

(a) Upon compliance with this Article and approval of the license application, the applicant shall be issued a tow truck driver's license that shall contain a full-face photograph and a complete physical description of the licensee. Such license shall at all times be and remain the property of the city.

(b) Such license shall remain in the possession of the tow truck driver at all times and shall be presented upon request to any police officer desiring to inspect the same.

**Sec. 8-169. Expiration.**

A tow truck driver's license issued under the provisions of this Division is nontransferable and shall expire on December 31 of each year. Applications for renewal and the renewal fee must be received no later than December 1 of each year. Failure to submit an administratively complete application and renewal fee by December 1 of each year shall result the denial of the application for a tow truck driver's license.

**Sec. 8-170. Fee.**

The application for an annual tow truck driver's license required by the provisions of this Division shall be accompanied by a nonrefundable application fee in an amount established by resolution of the City Council.

**Sec. 8-171 – 8-185. Reserved.”**

Section 5. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of said Ordinances except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the Ordinances or sections thereof that have been specifically repealed on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance or section thereof and for that purpose the Ordinance or section thereof shall remain in full force and effect.

Section 6. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 7. All rights and remedies of the City of Dickinson are expressly saved as to any and all violations of the provisions of any Ordinances affecting and which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 8.

8.01 Any person who intentionally, knowingly, recklessly or with criminal negligence violates any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed Five Hundred Dollars (\$500) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

8.02 If the City Council of the City of Dickinson determines that a violation of this Ordinance creates a threat to the public safety, the City of Dickinson may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity. The City of Dickinson is not required to give bond as a condition to the issuance of injunctive relief.

Section 9. This Ordinance shall be in full force and effect from and after its date of passage, in accordance with the law.

PASSED AND APPROVED on first reading this 22<sup>nd</sup> day of July, 2008.

PASSED AND APPROVED on second reading this 12<sup>th</sup> day of August, 2008.

PASSED, APPROVED, AND ADOPTED on third and final reading this \_\_\_\_ day of \_\_\_\_\_, 2008 (Third reading suspended).

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Julie Masters, Mayor  
City of Dickinson, Texas

ATTEST:

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Carol L. McLemore, City Secretary  
City of Dickinson, Texas

APPROVED AS TO FORM AND CONTENT:

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Loren B. Smith, City Attorney  
City of Dickinson, Texas