

ORDINANCE NO. 23-2301

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, ADDING CHAPTER 18 (TOW SERVICE FRANCHISES) TO ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE

WHEREAS, the City of Carson (“City”) is a charter city located in the County of Los Angeles, State of California; and

WHEREAS, Section 1000 of the City Charter authorizes City to adopt an ordinance to establish an appropriate general or specific process for granting franchises to any person or firm furnishing tow services using City’s public streets, and conditioning such franchises in a manner which best protects public health, safety, and welfare, and assure cost recovery; and

WHEREAS, the City’s “police powers” permit it to contract for activities related to services provided to the City and residents of the City to protect public health, safety, and welfare, including activities related to towing of abandoned vehicles, non-operable vehicles, illegally parked vehicles, and vehicles involved in accidents or traffic stops; and

WHEREAS, Section 1001 of the City charter provides that “[i]n connection with granting any franchise, City Council may set and collect any franchise fee it deems reasonable, so long as such fee is not arbitrary or confiscatory”; and

WHEREAS, the City Council now desires to regulate the operation of non-consensual tows in the City and to provide for an orderly process of removing vehicles from public property as authorized under its charter and as further authorized under State law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference as findings of fact.

SECTION 2. CEQA. This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines for CEQA (California Code of Regulations, Title 14, Chapter 3), because approval of this ordinance does not have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. CODE AMENDMENTS. Chapter 18 (Tow Service Franchises) of Article VI (Taxes and Licenses) of the Carson Municipal Code is hereby added as follows:

“CHAPTER 18

TOW SERVICE FRANCHISES

618000 Short title.

This ordinance shall be known as the Franchise Tow Service Program (“FTSP”).

618010 Purpose and Intent

The purpose of this chapter is to establish towing regulations to govern the provision of non-consensual City towing services, consistent with applicable laws, as well as to protect the public health, safety, and welfare. A further purpose is to ensure that the best possible tow truck operators are selected to participate in the City’s rotational tow program in conducting efficient, prompt, safe, and comprehensive towing services.

These regulations are not intended to govern situations where towing has been requested by vehicle owners or private property owners. Instead, these regulations, along with the terms and conditions of the franchise agreement required under this chapter, are intended to provide a fair and objective method of selecting qualified tow truck operators to ensure that towing providers and drivers selected provide the City and the public with prompt, safe, and comprehensive non-consensual towing services using the latest in towing technology and vehicle towing and storage safety.

It is recognized that the City is authorized by its Charter and state law to adopt and implement a mechanism for safe and efficient towing and vehicle impoundment and that the City may impose fees deemed reasonable, so long as such fees are not arbitrary or confiscatory.

618020 Definitions

For the purposes of this chapter, certain terms used herein are defined as follows:

“Franchise Agreement” means an agreement between the City and a Franchisee for the purpose of providing Non-Consensual Towing Services as provided in this chapter.

“Franchisee” means any entity granted a franchise by the City to conduct Non-Consensual Towing Services by entering into a Franchise Agreement, pursuant to this chapter. All Franchisees are Tow Truck Operators.

“Non-Consensual Towing Services” means the towing, storage and impoundment of vehicles as authorized in a Franchise Agreement and as ordered and designated by authorized members of the City or City’s designee, and all related services required to transport, secure and maintain such vehicles and their contents, in situations where the vehicle owner is unable or unwilling to consent to having the vehicle towed, in accordance with the City’s Charter and applicable provisions of the California Vehicle Code and other laws.

“Tow Truck Operator” means a towing company and the owner(s) and/or managing employee(s) of a towing company that provides Non-Consensual Towing Services. There may be instances when Tow Truck Operators are not Franchisees.

618030 Compliance with Charter

The FTSP is subject to and shall in all respects comply with Sections 1000 and 1002 of the City Charter but shall not be subject to the requirements to adopt a resolution of intent and hold a public hearing prescribed in Section 1001 of the City Charter. Such exclusions are permitted under Section 1001.

618040 Franchise Term

Consistent with Section 1002 of the City Charter, no term of any Franchise shall exceed ten (10) years with a maximum of two opportunities to extend the term for up to additional five (5) years each. The City Council may grant a longer term on a case by case basis.

618050 FTSP Generally

A. The FTSP is established to allow for Non-Consensual Towing Services on a rotational basis, as may be applicable, in accordance with this chapter.

B. No person shall perform vehicle towing services for a non-consensual tow for the City of Carson unless such person has obtained a non-exclusive tow service franchise from the City to perform Non-Consensual Towing Services, as memorialized in a written tow franchise agreement (“Franchise Agreement”) which will contain or reference all program regulations, terms and conditions, including but not limited to, those which shall govern storage of vehicles once vehicles are towed, franchise fees, the term of the Franchise, termination and suspension rights and obligations, and Franchisee’s insurance and indemnity obligations. Each Franchise Agreement will be approved by the City Council and executed by the Mayor. The City Manager is authorized to oversee and monitor each Franchise Agreement for Non-Consensual Towing Services on public property, on behalf of the City, subject to the rules and regulations in state law and this chapter. In the event of any conflict between a Franchise Agreement and this FTSP, the terms and provisions of the Franchise Agreement will govern.

C. Participants in the rotational tow program shall pay City franchise fees in accordance with each Franchise Agreement and/or as from time to time set forth in a resolution adopted by the City Council. Such franchise fees shall be in addition to other applicable taxes, fees, or charges, if any, payable by tow operators conducting business in the City.

D. A franchise shall not be required for:

1. An officer or employee of the City in the course of his or her official duty.
2. Tow Truck Operators or drivers performing non-consensual tows when no Franchisee is available or able to perform such services or cannot provide such services in a timely manner.

618060 Eligibility and Program Details.

A. Only Tow Truck Operators who have been granted a non-exclusive franchise shall be eligible to participate in the rotational tow program. Operators wishing to obtain a non-exclusive tow service franchise shall submit a complete application to the City for review and approval.

B. Each application shall contain the following information:

1. The name, address, and telephone number of the applicant. If the applicant is a partnership or corporation, the name, address, and telephone number of each partner or of each of its directors, officers, managers, major stockholders, and associates, and the names, addresses, and telephonenumberes of any parent or subsidiary company;
2. If applicable, a complete and executed copy of the most recent City of Carson tow franchise agreement for Non-Consensual Towing Services; and
3. Any other information deemed reasonably necessary by the City Manager, or designee, to determine whether the requested franchise should be granted.

C. Upon receipt of a complete application, the City shall investigate the facts listed in the completed application supporting inclusion of the applicant in the rotational tow program. Within thirty (30) days after completion of the investigation, the City Manager may recommend to City Council that the applicant be granted a franchise and placed on the rotational program list unless, the City Manager, in his or her sole discretion, finds any one of the following exists:

1. The owner, operator, applicant or their application demonstrates an inability or unwillingness to comply with the terms and conditions of the federal, state, or local law, or the terms or conditions of the tow franchise agreement, or other terms or conditions that the City Manager may require pursuant to this chapter;
2. The owner, operator, applicant, or the City's experience with the owner, operator or applicant, demonstrates an inability or unwillingness to render prompt and efficient non-consensual tow services;
3. The City Manager determines that granting of a franchise to the applicant would not be in the public interest due to: any known history of lack of legal compliance, any known history of lack of compliance with past agreements with the City, or any financial condition that would affect prompt and efficient tow service;
4. The applicant has been removed from the rotational tow list within the last twelve (12) months;
5. A material statement made in the application is untrue;
6. A fact exists of which the City Manager has knowledge, which would be cause for removal or suspension of the applicant from participation in the rotational tow program;

7. The applicant does not maintain a business location or storage facility within five (5) miles of the boundaries of City limits, unless otherwise permitted by the City Manager;
8. The operator or applicant does not have the capacity to respond and arrive to the scene of a non-consensual tow request within the maximum allowed time that would be set forth in a Franchise Agreement, upon receiving notification from the City;
9. The owner, applicant, or any tow truck operator has been convicted of any of the following: auto theft, burglary, possession of stolen property, grand or petty theft, insurance fraud; a crime involving violence to the person of another (Penal Code §§ 207, 211, 215 and 242); a violation of the California Health and Safety Code relating to narcotics or dangerous drugs (Health and Safety Code § 11352); a violation of various sections of the Vehicle Code (§ 4461 -- Unlawful Use of Forms of Registration of Plates, Permits, Placards, or Validation Tags, § 4462(b) -- Unlawful Display on Wrong Vehicle), § 4463 -- Forgery of Registration, Licenses, § 4464 -- Altered License Plates. or § 5017(a) -- Unlawful Display of VIN Plate, as may be amended from time to time; a violation of any provision of Division 4 of the California Vehicle Code, related to the theft of motor vehicles as may be amended from time to time; or a crime relating to illegal acquisition of vehicle parts or documents relating to vehicle registration of ownership;
10. The applicant does not sign a tow franchise agreement for any reason whatsoever; or
11. The applicant does not have a valid business license (where required).

D. The City Manager may prescribe such terms and conditions, not in conflict with this chapter, that are necessary to further the public health, safety, and welfare. All participants in the rotational tow program shall comply with all the terms and conditions of this chapter, those terms and conditions set forth in the Franchise Agreement with the City, and any other such terms and conditions required by the City Manager in accordance with this section.

E. No more than three (3) franchises shall be granted and be active at one time in order to ensure that there are a sufficient number of Tow Truck Operators to fulfill the demand. To the extent more than one (1) tow franchise have been granted and are active at any given time, City will request tow services on a rotational basis. The City Manager or City Council shall have sole discretion to determine the number of franchises that will be active at any given time.

F. The City Manager may recommend to Council that the applicant be granted a tow franchise and be placed within the City's tow program. Council may award non-exclusive, non-consensual tow franchises in accordance with this chapter. The granting of non-consensual tow franchises shall be done through the Franchise Agreement executed by the Mayor, or Mayor's designee, as authorized by Council. Nothing contained in this chapter shall be deemed to require the City Council to grant any tow franchise if the City Manager determines that grant of any such franchise is not in the best interest of the City and the public.

G. Prior to the City Council granting any tow franchise under this chapter, there shall be a duly noticed public hearing thereon. The City Clerk shall cause notice of the application and of the time and place of hearing on the application to be published at least once in a newspaper of general circulation in the City at least three (3) calendar days prior to the date set for the hearing. Additionally, the City Clerk shall mail or deliver written notice of the public hearing to each applicant at least three (3) calendar days prior to the hearing, and post such notice on the City's official website and at other location(s) as the City Clerk may designate using the most modern means available to disseminate information to the public. At the hearing on an application for a franchise, the City Council shall give all persons desiring to be heard a reasonable opportunity to present evidence or otherwise be heard in favor of or in opposition to the granting of a franchise to the applicant. At such hearing, the City Council may require from the applicant such additional information as the City Council may deem relevant and necessary.

H. A tow franchisee shall not transfer, sell, sublet or assign the tow franchise, nor shall any of the rights or privileges therein be leased, assigned, sold in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of franchisee or otherwise, unless written authorization for such transfer, sale, subletting or assignment is obtained from the City Manager. Any attempt to do so in violation hereon shall be deemed void, *ab initio*.

I. The grant of a tow franchise shall be subject to the right of the City, whether reserved in such grant or not, to make all regulations that shall be necessary to secure public safety and welfare, including the right to make and enforce all regulations reasonably necessary to secure adequate, sufficient, and proper public service. Every tow franchise granted shall be subject to the right of the City to prescribe and regulate the rates, fares, rentals, or charges made for the service rendered under such franchise. The City shall have full and free access, at any and all reasonable times, to all books, records, and papers of such tow franchisee with the right to examine the same and make duplicate copies of the same or any part thereof.

J. The Franchise Agreement shall among other things provide that the Franchisee shall indemnify, hold harmless, release and defend the City, its City Council and each member thereof, and its officers, employees, commission members and representatives, from and against any and all liability, claims, suits, costs, expenses, fines, judgments, settlements, charges or penalties whatever, including reasonable attorneys' fees, regardless of the merit or outcome of the same arising out of, or in any manner connected with, any or all of the operations or services authorized, conducted or permitted under the franchise granted under this chapter.

K. The City Manager or designee shall be authorized to set the minimum levels and standards of liability insurance which must be maintained in order to apply for, to receive and to operate a franchise under this chapter. The City Manager or designee shall also establish the manner in which compliance with the minimum standards is demonstrated. The failure to maintain the minimum levels and standards of liability insurance for any period of time is a violation of this chapter and shall be sufficient grounds for temporary suspension or termination of a franchise granted under this chapter.

618070 Grounds for Suspension or Removal from Rotational Tow Program.

A. Should the City Manager determine there is sufficient reason to authorize the suspension or revocation of the franchise, the City Manager shall issue a written order to the tow franchisee clearly stating the reasons for such suspension or revocation. The following

constitute grounds for suspension or termination of a tow franchise and removal from the rotational tow program:

1. The approval of the application was obtained by fraud or by concealment of material facts or facts which, if known, would have caused the disqualification of the applicant;
2. The franchisee has violated any of the requirements of state or federal law, this chapter, or any subsequent rule and regulation established pursuant hereto;
3. The franchisee has been convicted of any of the offenses listed in the above "Eligibility and Program Details" Section (C)(9);
4. The franchisee knew or should have known that its driver or drivers have violated provisions of the Vehicle Code and have failed to take corrective action within a reasonable time;
5. The franchisee fails to perform the duties established by this chapter and the tow franchise agreement;
6. Non-payment of a franchise fee in full within thirty (30) days of its due date or non-payment resulting in breach of the Franchise Agreement, whichever is later;
7. The tow vehicle service is found to have charged above the posted rate;
8. The services rendered or the cooperation which the City has received are unsatisfactory and/or inadequate as a matter of public safety, as determined by the City Manager.

B. The City Manager, upon learning of grounds for suspension or revocation, shall by written notice, inform the tow franchisee of the action of suspension or revocation. Within thirty (30) days of the date of the written notice, the tow franchisee shall have the right to file a written request for a hearing before the City Manager. If no written request for a hearing is filed within such thirty (30) day period, the City Manager's action of suspension or revocation shall be deemed final except for any appeals filed under Section 618080 below. If the tow franchisee files a timely hearing request, the City Manager or his/her designee shall set a time and place for the hearing. All parties involved shall have the right to offer testimony, documents, and tangible evidence at a hearing on the issues and to be represented by counsel. At the conclusion of the hearing, the City Manager, or his/her designee, shall issue a written decision within fifteen (15) business days of the hearing.

618080 Appeals.

A. Any franchisee that has been denied participation in the tow program or suspended or removed from the tow program shall have the right to appeal such decision, by filing a written notice of appeal within ten (10) calendar days after receiving notice in writing of the final decision of suspension or removal. Such appeal shall set forth the specific ground or

grounds on which it is based. The City Council shall hold a hearing on the appeal within thirty (30) calendar days after its receipt by the City, or at a time agreed upon and shall cause the appellant to be given at least ten (10) calendar days' written notice of such hearing. At the hearing the appellant or its authorized representative shall have the right to present evidence and written or oral argument, or both, in support of its appeal. The determination of the City Council on the appeal shall be final. In the event that the City Council's determination is anything other than a complete reversal of the decision to suspend or revoke the franchise, the franchisee shall reimburse the City for all direct and indirect costs and fees incurred in connection with processing the appeal.

B. Any franchisee whose franchise is finally revoked may not apply for a franchise under City's FTSP for a period of one (1) year from the date of such revocation."

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be posted and codified in the manner required by law.

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PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this
____ day of _____, 2023.

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney