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ORDINANCE OF THE BOROUGH OF MERCHANTVILLE, COUNTY OF CAMDEN AND STATE OF NEW JERSEY AMENDING CHAPTER 84, TOWING, IN THE CODE OF THE BOROUGH OF MERCHANTVILLE

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Merchantville, County of Camden, and State of New Jersey, that Chapter 84, Towing, in the Code of the Borough of Merchantville is hereby amended as follows:

ARTICLE I. SECTION 84-1 Purpose.

A. The purpose of this Ordinance is to secure towing, recovery, and storage services for motor vehicles that are:

1. Standing in violation of current laws or ordinances, and/or that pose a safety hazard or a security risk, under circumstances where the owner or the operator is incapable of or unwilling to relocate the vehicle; or

2. Abandoned on public or private property; or

3. Recovered stolen, and unable to be immediately claimed by the rightful legal owner; or

4. The instrumental or fruits of a crime; or

5. Otherwise determined by the Police Department to require lawful removal and/or storage.

B. This community caretaking function, which is administered by the Police Department, requires a high degree of competence, integrity, reliability, expertise, and responsible business ethics on the part of the Towing Operator (hereinafter, "Operator"). Accordingly, the specifications contained herein are designed to secure the services of a professional, emergency towing/recovery Contractor, at a competitive and reasonable cost, while protecting the property rights and financial interests of vehicle owners.

ARTICLE II. SECTION 84-2 Word Usage and Definitions.

A. As used in this chapter and unless otherwise indicated by the context, the words or terms herein shall have the meanings indicated. When not consistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include words in the singular number and words in the singular number include the plural number.

B. As used in this chapter, the following terms shall have the meanings indicated:

BOROUGH — Borough means the Borough of Merchantville.

CHIEF OF POLICE — Chief of Police means the Chief of the Police of the Borough of Merchantville.

CRUISING — Cruising means the operation of an unengaged wrecker along a public street at a slow rate of speed or in any fashion calculated, designed or having the effect of soliciting towing business on a public street.

IMPOUND AREA — Impound area means the fenced-in area specifically used by a tower, on the approved towing list of the Borough, for storage of towed vehicles. Not more than two (2) "impound areas" may be contained with each one-half acre of any one (1) storage facility.

PERSON — Person means any individual, firm, partnership, association, corporation, company or organization of any kind.

SHALL — Shall is always mandatory and not merely directory.

STORAGE FACILITY — Storage facility means storage lot or storage area, and shall mean the location within two (5) miles of the geographic boundary of the Borough of Merchantville, consisting of a minimum of one-half (1/2) acre and used for storage of vehicles towed by towing operators on the list approved by the Borough.

TOWING LIST — Towing list means the list of towing operators and wreckers maintained by the Police Department under the direction and supervision of the Chief of Police to provide, on a rotating basis, towing service and storage at the request or call of authorized personnel or members of the Police Department in cases of emergency, accidents involving motor vehicles and for disabled, abandoned or illegally parked, operated vehicles.

TOWING OPERATOR — Towing operator means a person engaged in the business of offering towing services, whereby damaged, disabled, illegally parked, operated or abandoned motor vehicles are towed or otherwise removed from the places where they are damaged, disabled, impounded or abandoned by use of a wrecker, tow truck or other vehicles designed for that purpose.

TOWING SERVICE — Towing service means that service performed, rendered or provided by towing, removing, transporting or conveying any kind of vehicle which is or has been damaged, abandoned, impounded, disabled or otherwise unable to be moved under its own power, for which a charge is made against the owner or operator of the vehicle.

WRECKER — Wrecker means a vehicle designed and equipped for removing and transporting wrecked or disabled vehicles. This term shall also include a flatbed, tow truck or other vehicle used for or to perform towing services.

ARTICLE III. SECTION 84-3 Towing List.

The Chief of Police shall establish and maintain a list of qualified towing operators who shall be issued licenses to provide, on a rotating basis, towing services at the request of the Merchantville Police Department. Towing operators on the list will be scheduled and treated equally and fairly.

ARTICLE IV. SECTION 84-4 Licensed Required; Annual Renewal; Reinspection.

To be placed on the towing list, towing operators shall be qualified and required to apply for and hold a license to perform towing services at the request or call of the Police Department. The license shall be issued to all qualified towing operators approved by the Chief of Police to be placed on the towing list. Said license shall be subject to annual renewals by the Chief of Police on April 1 of each year. Prior to issuance of any license or renewal, the Chief of Police shall cause an inspection to be made of the required storage facility and towing equipment to verify compliance with this ordinance and all other applicable federal, state and local laws, ordinances, rules and regulations.

ARTICLE V. SECTION 84-5 Application for License.

A. Applications for licenses hereunder shall be submitted to the Chief of Police upon forms prepared and made available by the Borough. The application form shall be properly completed, signed and accompanied by the application and license fee. The Chief of Police shall investigate and review all applications for compliance with the terms of this chapter and minimum standards of operator performance mandated by statute. The background and driving records of all applicants and employees shall be checked by the Police Department.

B. Among other things, the applications shall contain:

1. The name of the applicant, with both the home and business address of the applicant as well as home and business telephone numbers.

2. A statement whether applicant is an individual, firm, partnership, association, corporation, company or other type of entity.

3. The names and addresses of all persons owning an interest in the applicant and, if a corporation, the names and addresses of all officers and stockholders with the interest held by each.

4. The names of all employees, with their drivers' license and social security numbers.

5. The description of all vehicles and equipment to be used in providing towing service, setting forth the year, make, model, serial number, license and registered owner of each vehicle.

6. The location within five (5) miles of the geographic boundary of the Borough of Merchantville wherein the equipment is maintained and stored; the name and address of the owner, lot and block number and size of storage facility or impound area.

ARTICLE VI. SECTION 84-6 Application and License Fee; Renewal Fee.

The application and license fee under this chapter shall be one hundred dollars ($100.00). The annual renewal fee shall be in the amount of fifty dollars ($50.00)

ARTICLE VII. SECTION 84-7 Operator Performance.

The following minimum standards shall be required of all operators seeking to be placed on the Towing List with the Borough for towing and storage services:

A. Equipment.

1. The operator must maintain the following equipment:

(i) One heavy duty wrecker – Minimum 25 ton capacity.

(ii) One medium duty wrecker - 20 ton capacity

(iii) One light duty wrecker - 10 ton capacity

(iv) One flat bed truck

2. Wreckers used by the operator must be of such construction to tow any type of vehicle and to pass inspection of the Borough Police Department.

3. Each vehicle shall be equipped with a shovel, broom and any other equipment necessary to clean up broken glass, oil and other fluids and any other debris from the scene of an accident. It shall be the operator's responsibility to clean up such debris if requested to do so by any officer of the Borough Police Department at the scene of the accident, at no cost to the vehicle owner, driver or representatives.

4. Wreckers shall be maintained in good condition, comply with all applicable provisions of N.J.S.A. 39:1-1, et seq., be available twenty-four (24) hours a day and be identified on each side with the name and address of the operator. There shall be no marking on wreckers indicating affiliation with Police Department, such as "official police towing."

5. At the time of submission of its bid, the operator shall submit to the Borough satisfactory proof of ownership of the required number of wreckers necessary to meet the Borough's requirements.

ARTICLE VIII. SECTION 84-8 Removal of Vehicles.

A. Abandoned vehicles - any vehicle of any size, in any condition, left anywhere within the Borough limits upon any street or public right-of-way, public easement, public avenue, alley, thoroughfare, or public or quasi-public places including parks and playgrounds, without a current registration, vehicle identification plates, insurance, determined abandoned by the Police Department pursuant to 39:4-56.5, etc. and all vehicles as defined by N.J.S.A. 39:10A-1. When the Borough obtains a Court Order from a municipal judge to remove a vehicle from private property, the vehicle will be deemed to be abandoned for purposes of this Section and the requirements of this Section shall apply.

B. Disabled vehicle - any vehicle left anywhere within the Borough limits due to its inability to operate resulting from motor vehicle accident or mechanical failure.

C. Impounded vehicle - any suspected stolen, unregistered, unsafe vehicle or a vehicle involved in criminal investigation on which a "HOLD" has been placed by the Police Department.

D. Otherwise determined by the Police Department to require lawful removal and/or storage.

E. General Procedures

1. Operator shall be notified by the Department of Police for the removal of all vehicles whether considered abandoned, disabled or impounded. Operator must arrive prepared to remove all vehicles within twenty (20) minutes of notification, unless otherwise specified by the Police Department. If the operator fails to respond within the allotted time, the Borough may, within its discretion, notify another vendor to effect immediate removal and towing of vehicles. Any towing charges assessed by the vendor to the Borough shall be passed on to the operator.

2. Operator must be available for removal and storage of vehicles twenty four (24) hours a day, seven days a week, including the removal of abandoned vehicles.

3. In the event that the owner of a vehicle also arrives at the scene to which operator has been summoned, with approval of the police department the owner shall be allowed to remove the vehicle at no expense to himself or the Borough.

4. In the event operator is required to perform additional unspecified services in furtherance of its obligations hereunder, such services shall be provided at reasonable cost. Such services shall not affect the basic towing and storage charges outlined in these specifications. Such services and the costs to be charged therefore shall be reported and supplied to the Borough forty-eight (48) hours before the performance of these services. The Borough shall have the right to discontinue any additional unspecified service it deems not to be in furtherance of this Ordinance.

5. The Borough shall have the exclusive right to define what constitutes "motor vehicle" for purposes of this Ordinance. Anything deemed by the Borough at its sole discretion not

to be a "motor vehicle" may be removed or in any other way dealt with by the Borough without compensation to the operator.

6. The Borough shall have the exclusive right to determine what constitutes a "salvage" vehicle for the purpose of this Ordinance. The Borough shall have the exclusive right to determine what constitutes a "scrap/shredder" vehicle for the purpose of this Ordinance.

7. In the event that a vehicle has been wrongfully removed pursuant to this Ordinance, the vehicle shall be returned to the owner at no charge. On occasion, operator will be required to tow certain wrongfully removed vehicles back to the initial towing site. In the event the Police Department authorizes the impounding of any vehicle for investigation from the "victim" of a crime or offense, said vehicle shall be returned to the owner upon completion of the investigation at no charge to the victim.

8. Any municipal owned vehicles shall be towed free of charge.

9. Operator shall change flat tires on any Borough owned vehicle, free of charge, when requested by the Borough.

10. Operator must accept all major credit cards for all towing services and associated costs.

ARTICLE IX. SECTION 84-9 Storage of Vehicles.

A. All vehicles removed pursuant to this Ordinance must be stored at the operator's storage facilities, with the following exception: On occasion, operator will be required to tow certain vehicles, which are involved in criminal investigation, or other investigations to a designated facility for further investigation, at no charge to the Borough.

B. All vehicles removed pursuant to this Ordinance shall be stored in a separate holding area of operator's storage facilities. Only vehicles towed pursuant to this Ordinance shall be stored in said holding area and there shall be no co-mingling of these with any other vehicles. Within this designated area, abandoned or disabled vehicles shall be separated from impounded vehicles. Impounded vehicles shall be stored in a separate, enclosed, secure facility which shall be able to provide space for a minimal of two (2) vehicles towed for criminal investigation. There shall be no additional charge for inside storage, if required.

C. All vehicles removed pursuant to this Ordinance shall be stored according to the month in which they were towed and shall be marked appropriately on the windshield.

D. Operator shall be responsible for each vehicle in his Storage area, including but not limited to damage or theft, until final disposition or removal is ordered by the Borough. All vehicles, regardless of condition, must be stored singly and so arranged to permit inspection and subsequent removal if necessary. Adequate walkway inspection space must be provided at all times.

E. The owner of any vehicle towed shall have the right to remove property belonging to

him from the stored vehicle at no cost to the owner unless a "Police Hold" is marked on tow form. Vehicle owner or his representative shall have the right to take photos of a stored vehicle for insurance purposes at no cost to the vehicle owner or his representative. Any property removal disputes will be referred to the police department.

F. All valuables found in vehicles, such as jewelry or currency, shall be turned into the Police Department. After-market items such as audio equipment, auto accessories shall be stored and inventoried by the operator.

G. All vehicles and/or property stored pursuant to this Ordinance shall be produced no later than two (2) hours upon demand by the Police Department.

ARTICLE X. SECTION 84-10 Disposal of Vehicles.

A. Release of vehicles to owners or lien holders.

1. No vehicle shall be released to either owners or lien holders without a "Police Release form." Vehicles shall be available for release between 9:00 A.M. to 5:00 P.M., Monday through Friday, and 9:00 A.M. to 12:00Noon, Saturday, except for legal holidays. It shall be the responsibility of the Borough Police Department, to notify the owners of vehicles, when known, when vehicles are turned over to the operator for removal and storage. Additionally, the operator shall notify in writing, the owner(s) and lien holder(s) of the location of the vehicle and all costs associated with its removal.

2. Upon the release of a vehicle to its owner or lien holder, all ownership rights and responsibilities shall revert to the owner or lien holder. The Borough shall not be liable for daily storage fees for any day following the date of release, whether or not the owner actually reclaims possession of the motor vehicle from the operator. Operator shall not impose any additional charges upon an owner or lien holder which are not expressly indicated. All vehicles shall be released by operator upon receipt of a police/vehicle release form from the police department.

3. The Borough Police Department shall notify the operator of all released vehicles stored at the operator's storage facilities pursuant to this Ordinance. However, any failure to provide such information cannot be used as a basis for liability against the Borough.

4. The operator shall notify the Borough of any released vehicle which remains unclaimed by the owner by way of a monthly written report.

B. Disposal by public sales.

1. Pursuant to state law, abandoned and disabled vehicles may be disposed of after remaining unclaimed for a period of 30 days and may be sold at public auction. Impounded vehicles must be held for a period of at least 90 days prior to sale at public auction.

2. Prior to each sale, all vehicles to be sold shall be numbered by the operator for identification purposes.

3. The operator shall be required to complete all necessary documents to obtain the appropriate titles for the vehicles. Each sale shall be advertised as required by law and the advertisement shall state the date of the sale, the lowest minimum bid for each vehicle and the towing and storage fees accrued up to the date of sale. The Operator shall be responsible for all costs associated with advertisement fees and any fees necessary to obtain junk titles.

4. It shall be exclusively within the authority of Borough of Merchantville to determine which vehicles are exposed to public sale. The operator is required to have all vehicles advertised for sale available for inspection and sale in accordance with the public advertisement. Operator shall make said sale vehicles available to the public for inspection one (1) hour prior to the scheduled sale time.

5. Operator shall be entitled to reimbursement, from the successful purchaser, for the towing fee plus accrued daily storage fees in accordance with the fee schedule as set forth in the corresponding Resolution. The daily storage fees shall commence the day of the tow and shall end the day of the public sale of the vehicle.

6. Operator shall furnish the Borough in advance of each public sale, the amount of operator's lien calculated to the date of the sale. Failure to do so shall be deemed a waiver by the operator of the right to enforcement of said lien.

7. Each successful purchaser at the public sale shall reimburse the operator for accrued towing and storage fees for the vehicle he/she purchases. The remainder of the purchase price, if any, shall be paid to the Borough by the successful purchaser. All monies will be collected by the operator and turned over to the Borough.

8. Operator may participate in the public sale as a bidder.

9. The Borough will not be responsible for charges due and owing the operator from a claimant or purchaser of a vehicle, nor will it assist the operator in collecting such charges.

10. Any monies received by the Borough upon sale of any property pursuant to law shall be the property of the Borough and shall not be subject to any charges, claims or liens by the operator, his agent, or servant.

11. The Borough reserves the right to retain possession of any vehicles or vehicle parts, ownership of which the Borough has obtained pursuant to N.J.S.A. 40A:14-157 and N.J.S.A. 39:10A-1, needed for municipal purposes. The Borough shall not be assessed any towing or storage charges for these vehicles.

12. It shall be exclusively within the authority of the Borough to sell some, or all, vehicles in multiple lots rather than individually. Salvage vehicles shall be sold as a lot only auction.

13. The Borough shall hold public sales at its discretion and shall not be liable for any expenses incurred by operator as a result of failure to hold sales.

C. Disposal of scrap/shredder vehicles. The operator shall dispose of all vehicles which

have been determined to be scrap/shredder vehicles by Borough of Merchantville shall not be reimbursed by the Borough for any towing and storage fees for any scrapped/ shredder vehicle and/or stored pursuant to this Ordinance.

ARTICLE XI. SECTION 84-11 Records and Inspections.

A. Operator shall maintain a record of all property found anywhere in a towed vehicle, including the trunk and glove compartment, if open or key available, and shall be responsible until claimed by owner.

B. Operator shall maintain records of all vehicles towed, stored, and released by him under this Ordinance, as well as all services rendered pursuant to this Ordinance including additional unspecified services performed in furtherance of operator's obligations hereunder. Records shall be kept for a period of seven (7) years.

C. The Chief of Police, or his designee, shall have access to any part of the storage area at any time of the day or night, for inspection purposes, including both indoor and outdoor area.

D. Authorized representatives of the Department of Police, shall have access to any of the records required to be kept by the operator. These representatives will include the Chief of Police, Detective Sergeant, or any other person designated by the Chief of Police or Mayor.

ARTICLE XII. SECTION 84-12 Charges for Services.

The fee schedule or charges established for the towing and road services by towing operators on the rotating Borough list maintained by the Borough of Merchantville Police Department under the direction of the Chief of Police and for storage in conjunction therewith, shall be adopted by Resolution of the Borough Council of the Borough of Merchantville, with reference to this Section of Chapter 84.

ARTICLE XIII. SECTION 84-13 Standby Services.

A. In addition to the other services herein outlined, the operator will be required to furnish extra towing equipment and service during storm periods, periods of snow emergencies, traffic emergencies, disasters, etc., and for any other reason when so designated by the Mayor and/or Chief of Police, or their duly authorized representatives. During such periods which are herein referred to as Standby Periods, the operator shall be required to furnish adequate equipment and service to be held ready to remove passenger vehicles, trucks, tractor trailers and other heavy vehicles and equipment.

B. Standby service will begin when the Chief of Police, or his authorized designee, calls

the operator initially and will end when he terminates the standby status by calling the operator.

C. The Borough reserves the right, during any emergency, to designate temporary areas owned or leased by the Borough for the storage of disabled vehicles to said area at the direction of the Chief of Police.

D. During said emergencies, the operator shall be entitled to make regular charges to the owners of the vehicles so removed and where storage space is made available by the operator, the operator shall be entitled to charge the owner of the vehicle the lawful daily storage charge in addition thereto.

ARTICLE XIV. SECTION 84-14 Record of Vehicle Towed.

Every licensed towing operator called by the Police Department shall keep a record of the name and address of the owner of the towed vehicle and shall file reports as required by the Chief of Police which shall include but not be limited to itemized towing and storage charges per vehicle.

ARTICLE XV. SECTION 84-15 Violations; Penalties.

Any person who violates any provision of this chapter may be removed from this towing list and, in addition, upon conviction, shall be subject to a fine of not more than one hundred dollars ($100.00) for each offense. Each violation shall constitute a separate offense and shall be charged as a separate offense.

ARTICLE XVI. SECTION 84-16 Termination of License.

Any towing operator on the towing list who fails to properly respond to calls in the established response time, fails to provide adequate service or otherwise violates the terms and provisions of this chapter, falsifies any information with regard to his application or violates the Department of Insurance rules shall be subject to license termination by the Chief of Police.

ARTICLE XVII.

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

ARTICLE XVIII.

All Ordinances contrary to the provisions of this Ordinance are hereby repealed to the extent that they are inconsistent herewith.

ARTICLE XIX.

This Ordinance shall take effect after passage and publication according to law.

THE BOROUGH OF MERCHANTVILLE

BY:_____
FRANK M. NORTH, MAYOR

ATTEST:

_____
DENISE BROUSE, BOROUGH CLERK

The foregoing Ordinance was introduced by Mayor and Council at the regular meeting held on July 12, 2010. This Ordinance will be considered for adoption on final reading and public hearing to be held on August 9, 2010 at 7:30 p.m. in the Caucus Room, Merchantville Borough Hall, 1 West Maple Avenue, Merchantville, New Jersey.

The purpose of this Ordinance is to modify the existing towing regulations in the Code of the Borough of Merchantville. A copy of this Ordinance is available at no charge to the general public between the hours of 8:30 AM to 4:30 PM, Monday through Friday (Legal Holidays excluded), at the Office of the Borough Clerk, Merchantville Borough Hall, 1 West Maple Avenue, Merchantville, New Jersey.