



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/13/99
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT: Ordinance Re: Operation of Tow Companies in the City of Hayward

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance amending Chapter 6, Article 8, of the Hayward Municipal Code, relating to the operation of Tow Companies in the City of Hayward.

BACKGROUND:

Chapter 6, Article 8, of the Hayward Municipal Code deals with the operations of Tow Companies, including tow trucks, within the City of Hayward. The existing ordinance has been in effect since 1971 with no revisions.

The City of Hayward currently has fourteen tow companies operating in the City. Four of those operate under contracts with the City to perform tow operations at the request of the Police Department. The Police Department has had an increase in complaints from citizens related to vehicles being towed, primarily from non-contracted tow companies performing private property tows. Based upon investigations by the Police Department and analysis of these complaints, it was determined that the existing ordinance is not adequate to address these complaints.

On January 12, 1999, a meeting was held at the Hayward Police Department regarding tow companies wishing to contract with the City of Hayward for tow services. All tow companies were invited. All the current contract tow companies were in attendance as well as one non-contract tow company. At the meeting draft copies of the proposed tow ordinance changes were distributed to those in attendance. All attendees were asked to provide any comments or feedback to the Traffic Bureau of the Police Department. As of February 18, 1999, no comments have been received.

In addition, State regulations and the California Vehicle code have changed in the last 28 years. Accordingly, staff is recommending that Council introduce the attached ordinance amending Chapter 6, Article 8.

OVERVIEW OF ORDINANCE:

The proposed ordinance essentially repeals and supersedes the existing ordinance. It is generally organized into five main parts: towing operations when permit required; investigations and hearings; issuance, denial and revocation of permits; proof of financial responsibility; and penalties.

TOWING OPERATIONS-PERMIT REQUIRED

This part redefines towing operations. Tow operations are now grouped into two categories, consensual tows and non-consensual tows.

A consensual tow is a motor vehicle transport with the consent or authorization of the owner of the vehicle. An example of this would be a person requesting a specific tow company to transport their vehicle or a business that uses a specific tow company to transport their vehicles. Tow companies that perform only consensual tows are not required to obtain a permit from the City of Hayward to tow within the city limits. They are regulated by the vehicle code.

A non-consensual tow is a tow that is not requested by the vehicle owner. An example of a non-consensual tow would be a Police requested tow or a tow from private property at the property owner's request. Tow companies performing non-consensual tows are required to obtain a permit to operate from the City of Hayward.

INVESTIGATIONS AND HEARINGS

This part was added to allow the Chief of Police to do a thorough background check. The background check will include equipment inspections, financial and insurance status and the moral character of the applicant and other persons named in the application.

ISSUANCE, DENIAL AND REVOCATION OF PERMITS

The previous ordinance only addresses the revocation and suspension of permits. The revision has expanded the conditions to include issuance and denial. This section makes the process of issuance, denial and revocation of permits more consistent throughout the ordinance.

PROOF OF FINANCIAL RESPONSIBILITY REQUIRED

California Vehicle Code section 34631.5 regulates insurance requirements by motor carriers. This vehicle code section was revised in 1997. The change in this article reflects the vehicle code changes. The change also makes the type of insurance carried or obtained by a tow company subject to approval by the City Attorney.

PENALTIES

This section was added to make any violation of this Article an infraction and any three violations in a twelve-month period a misdemeanor.

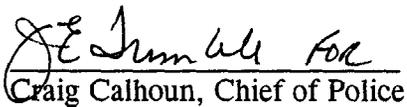
CONCLUSION:

The purpose of these revisions are to assure that all tow companies operating in the City of Hayward provide high quality tow services to the motoring public within the City limits of Hayward. These changes will give the Police Department the ability to bring all the companies into compliance. It is recommended that the City Council introduce the attached ordinance.

Prepared by:


Lloyd Lowe, Sergeant

Recommended by:


Craig Calhoun, Chief of Police

Approved by:


Jesús Armas, City Manager

Attachment: Draft Ordinance

ORDINANCE NO. ____

AN ORDINANCE AMENDING ARTICLE 8 OF CHAPTER 6 OF THE HAYWARD MUNICIPAL CODE, TOWING OPERATIONS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 8 of Chapter 6 of the Hayward Municipal Code, Towing Operations, is hereby amended to read in full as follows:

ARTICLE 8

TOWING OPERATIONS

“SEC. 6-8.00 DEFINITIONS. For the purpose of this Article certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context a different meaning is intended.

- (a) ‘Consensual Tow’ is motor vehicle transportation with the consent or authorization of the owner or operator of the vehicle; ‘non-consensual tows’ are tows without such consent.
- (b) “Person” includes an individual, a firm, or a co-partnership, a corporation, an association, or a joint-stock association.
- (c) “Towing Operations” is the business of towing for compensation motor vehicles in the City of Hayward, whether or not the towing extends beyond the City. “Towing Operations” refers to tows which originate within the City of Hayward. Such business also includes the storage of the towed vehicles, pending their return to the owners thereof, by the person who towed such vehicles or by some other person for the person who towed such vehicle.
- (d) “Tow Truck.” A tow truck is a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A “roll-back carrier” designed to carry up to two vehicles is also a tow truck.
- (e) “Business Location.” The business location is the physical location from

which towing operations are conducted. Business location includes both the business office and vehicle storage facility.

- (f) “Chief of Police” means the Chief of Police for the City of Hayward, or his or her designee.

“SEC 6-8.10 TOWING OPERATIONS-PERMIT REQUIRED.” It shall be unlawful for any person or towing operation to perform any non-consensual tows within the City of Hayward unless the person so operating has applied for and obtained a permit to do so, and unless the permit is in full force and effect.

- (a) **Application for Permit.** Any person desiring to obtain the permit required by this article shall make an application for the permit to the Division of Revenue upon forms provided by the Revenue Division. The application shall set forth:

- “(1) The name and address of applicant, and if the same be a corporation, the names of its principal officers; if the same be a partnership, association, or fictitious company, the names of the partners or persons comprising the association or company, with the address of each;
- “(2) A description of every tow truck which applicant proposes to use, including trade name, vehicle identification number, state license number, towing capacity, and body style;
- “(3) The street number and exact location of the business and the place where the applicant proposes to store towed vehicles;
- “(4) The name of the legal and registered owner of each tow truck;
- “(5) All persons whose names appear as required by subparagraph (a) of this section shall indicate in their application their assent to submit to background investigation and fingerprinting by the Chief of Police;
- “(6) Such other information as the Chief of Police may deem necessary in all applications or in individual applications, for the proper police protection of the City.

- “(b) **Investigation and Hearing.** Upon receipt of any application for a permit, the Division of Revenue shall refer the matter to the Chief of Police for investigation. In the course of the investigation, the Chief of Police shall inspect the vehicles, equipment, and business location, and may require the applicant or any person

named in the application to be photographed and fingerprinted. The Chief of Police shall complete his or her investigation within 30 days, unless prevented from doing so by lack of cooperation of the applicant or other person named in the application, and shall provide a written statement to the Division of Revenue directing either the issuance or denial of the application.

“(c) Issuance of Permit.

“(1) Upon receipt of the statement, the Division of Revenue shall issue the permit if the Chief of Police has so indicated. Otherwise, the application shall be denied.

If the application is denied, the Division of Revenue shall so notify the applicant in writing within 10 days after the decision is rendered.

“(2) Every person holding a valid permit to engage in towing operations as of the effective date of this Article shall be deemed to be able to perform towing services and to conform to the provisions of this Article and other applicable laws and regulations, provided, however, that such persons must renew their permit under the terms of this Article within one year from the effective date of this Article.

“(3) Upon the issuance of a permit, the original thereof shall be filed in the office of the City Clerk and a copy thereof shall be issued to the applicant.

“(d) Grounds for Denial. Any of the following reasons shall be sufficient for denial of a permit required by this article:

“(1) That the application is not in the form, and does not contain the information required to be contained therein by this article;

“(2) That the vehicles described therein are inadequate or unsafe for the purpose for which they are to be used;

“(3) That the applicant has within the past two years had an application for a permit denied for cause or the applicant has, at some prior time, had such a permit revoked for reason;

“(4) That the applicant, his or her agents or employees do not possess the requisite knowledge or ability, equipment or facilities necessary to operate towing operations in such a manner as to adequately protect vehicles that are towed and stored from damage, theft or pilferery.

“(5) That the applicant has failed to comply with any rules or regulations

set forth in this Article, or any local, state or federal laws.

“(e) Proof of Financial Responsibility Required.

“(1) No permit shall be issued or continued in operation, and no owner shall continue in the business of towing operations, unless there is in full force and effect motor vehicle liability insurance as required by this section. Each vehicle the owner proposes to use as a tow truck must be separately listed and insured under the motor vehicle liability policy.

“(2) The motor vehicle liability policy required by this section shall insure the owner and any other person using or responsible for the use of any such vehicle, with the consent, express or implied, of the owner against loss from the liability imposed upon such owner by law for injury to or death of any person, or damage to property, growing out of the maintenance, operation or ownership of any tow truck. The policy must comply with at least the minimum coverage for which liability shall be assumed for injury, death and destruction of property as established in Vehicle Code section 34631.5, as amended from time to time.

“Every certificate evidencing the insurance required under the provisions of this section shall certify that the motor vehicle liability policy or policies evidenced shall not be canceled except upon 30 days prior written notice thereof to the City Attorney's Office.

“All motor vehicle liability policies and all certificates thereof shall be subject to the approval of the City Attorney in any and all matters, and if at any time, in the judgment of the City Attorney, the motor vehicle policies are not sufficient for any cause, the City Attorney may require the owner to replace the motor vehicle policies within 10 days with other policies in accordance with the provisions of this section. If the owner fails to replace the motor vehicle policies within the 10-day period with good and sufficient policies, as set out in this section, then the City may suspend the owner's permit until the requirement is complied with or the permit is revoked.

“(f) Revocation. Any permit granted under the provisions of this article may be revoked by the Chief of Police either as a whole or as to any part described therein, upon five days notice to permit holder, requiring him or her to appear at a certain time and place to show cause why the permit should not be revoked for any of the following reasons:

“(1) That the undertaking provided for in subdivision (f) has not been given or has been withdrawn or lapsed for nonpayment of premium, or is not in force for any reason;

- “(2) For the nonpayment to the City of any required license fee;
 - “(3) For failure to observe any of the rules and regulations or provisions set out in this article or in the permit;
 - “(4) For the violation of any of the laws of the federal or state government, or local ordinances of the City by any permit holder or employees;
 - “(5) The permittee, his agents or employees have engaged in repeated acts of negligence in the conduct of towing operations, or willful misconduct, or willful neglect, resulting in damage to vehicles while in the process of being hooked up, towed or stored, or resulting in theft of such vehicles or of property therein;
 - “(6) The permittee has knowingly submitted facts and information in an application for a permit which are untrue, or intentionally omitted or failed to indicate in the application facts which if submitted, could have resulted in a rejection of the application for a permit;
 - “(7) The permittee, his agents or employee fail to report vehicle removals or tows immediately to Hayward Police Department or to the jurisdiction where the vehicle was towed, providing complete and verified license plates as well as complete and verified Vehicle Identification Numbers, or as may be required by law;
 - “(8) The permittee, his agents or employees have done anything which would authorize denial or a new permit if one were applied for;
 - “(9) The permittee, his agents or employees towed a vehicle to a location other than listed as the business address of such permittee without first receiving authorization to do so by the person authorizing the tow;
 - “(10) The permittee, his agents or employees after towing a vehicle to a business location of permittee, without authorization, towed such vehicle to another location for storage; or
 - “(11) The permittee, his agents or employees have charged for services not performed, equipment not employed or used, services or equipment not needed, or have otherwise materially misstated the nature of any services performed or equipment used.
- “(g) Transferability. No permit issued under the terms of this article shall be transferable either by contract or operation of law without the permission of the Chief of Police having been first obtained, and any such attempted transfer shall be sufficient cause for revocation thereof.

“SEC. 6-8.11 CHANGES OF OPERATION. In the event any permit holder desires to substitute any vehicle for a vehicle described in the application, or to increase or decrease the number of vehicles used, application to the Chief of Police shall be made for permission to do so, and the Chief of Police shall grant such permission so long as the permit holder has complied with all the provisions of this Article.

“SEC. 6-8.20 RATES TO BE CHARGED FOR TOWING OPERATIONS. The City Council of the City of Hayward may, from time to time, establish or amend by resolution after a public hearing a schedule of maximum fees or rates which may be charged for any service or materials in towing operations, including but not limited to, towing, storage, opening a locked vehicle, use of any special equipment, safekeeping any vehicle or its contents, delivery of any towed vehicle to any location other than the regular place of business of the holder of a tow car permit or towing from a public street and towing from private property.

Prior to the City Council hearing on the initial enactment of the rate schedule there shall be publication at least once of notice of said hearing in a newspaper of general circulation within the City at least ten (10) days before the hearing date. The hearing on amendments to the initial rate schedule shall be preceded by at least ten (10) days notice of such hearing given by letter from the City Clerk to each person conducting towing operations who has applied for and received the permit required by Sec. 6-8.10 of this Article directed to the address contained in the application for a permit and by publication at least once of the notice of such hearing in a newspaper of general circulation within the City at least ten (10) days before the hearing date.

Copies of such rate schedules shall be posted in a conspicuous place in the office or other place where customer financial transactions take place. No person conducting towing operations shall fix, charge or collect a rate or charge more than the rates established by the City Council. All rates established in the foregoing manner shall remain effective and shall not be amended or varied except by resolution of the Council. The establishment of such maximum rates by this means shall create no penalty upon any person conducting towing operations at rates less than such established maximum rates.

The City Clerk shall mail a copy of any such resolution adopted by the Council to each person conducting towing operations who has applied for and received a permit as required by Sec. 6-8.10 of this Article.

“SEC 6-8.21 RATES AND CHARGES-SIGNS. A person conducting tow operations shall maintain a sign listing the rates and charges of all services offered. Such sign shall be conspicuously placed in the office or other place where customer financial transactions take place. Such sign shall conform to the requirements as specified in section 3070(d)(2)(E) of the California Civil Code. The letters and numbers on such sign shall be a minimum of one-inch with one-quarter inch stroke. The letters and numbers shall be in a contrasting color from the background. No charge other than those listed shall be made.

A Towing Operator's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from

the street, as determined by the Chief of Police. The sign shall be visible during the hours of darkness. Business hours shall be posted in plain view to the public.

“SEC 6-8.30 RULES AND REGULATIONS FOR OPERATION. The following rules and regulations shall be observed by all persons operating tow trucks:

- (a) Tow Truck Operator. A tow truck driver shall wear the approved insignia and name in a conspicuous place on his clothing. A tow truck driver shall identify him/her self by giving their full, correct name to any patron of the towing operation upon request. The tow truck driver shall possess a valid California Drivers License in the proper class for the vehicle being driven.

- (b) Itemized Statement: When Required. A person conducting towing operation shall furnish an itemized statement of services performed, labor and special equipment used in completing tow of a vehicle and the charges made thereof to and upon the request of:
 - (1) The person requesting the towing service or his agent; or
 - (2) The legal owner of the vehicle towed; or
 - (3) The registered owner of the vehicle towed; or
 - (4) The insurance carrier of either (1), (2), or (3); or
 - (5) The duly authorized agent of (1), (2), (3), or (4)

A person conducting towing operations shall furnish a copy of the statement to any person authorized by this section to receive the statement without demanding payment as a condition precedent.

- (c) Release of Vehicles. A person conducting tow operations shall provide for the release of the vehicles towed twenty-four (24) hours a day, seven (7) days a week by having an attendant on duty or available on call and able to respond to service within a period of thirty (30) minutes. “Normal business hours” shall not be less than 8:00 am to 5:00 p.m., Monday through Friday, except for the following recognized holidays: New Years Day, Martin Luther King Day, Lincoln’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day.

- (d) Towing Authorization - Private Property. Except as indicated in the paragraph below, no person shall have the vehicle of another towed from private property in the City of Hayward unless the Police Department of the

City has been notified prior to the tow and a police officer has arrived at the scene of the tow and has cleared the vehicle for tow. Issuance of a citation for violation of Hayward Traffic Code section 8.14 or any amendment or replacement thereof shall be deemed clearance for the tow of the such a vehicle. If the legal or registered owner of the vehicle or other person in lawful possession of the vehicle returns prior to such clearance, said vehicle shall be released to said person without any charges by the towing operation; however, said release shall not prevent the issuance of a citation by a police officer.

In lieu of clearing a vehicle at the scene, the Chief of Police may authorize clearance to be given and duly logged in the records of the Police Department upon receipt of the notification of the intended tow from private property when said property has been previously inspected by the Police Department to assure that required tow-away signs have been posted giving adequate notice that parking is prohibited or restricted.

“SEC. 6-8.40. PENALTIES. Any person violating any provision of this Article shall be guilty of an infraction. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in Government Code section 36900. After the third conviction for a violation of this Article within any twelve-month period, any subsequent violation within the twelve-month period may be punished as a misdemeanor.

“The procedure provided in the provisions of this Article shall be cumulative and in addition to any other remedies provided in ordinances of the City or by State law, and shall not prejudice or affect any other action, civil or criminal, to enforce any rights or prosecute or restrain any violations hereunder.”

“SEC. 8.50. APPEALS. Any person aggrieved by an act or failure to act on the part of the Chief of Police, either in issuing, failing to issue or revoking any certificate or permit provided for pursuant to this article, may appeal to the City Manager pursuant to Article 1, Chapter 6, of this Code, section 6-1.40.

Section 2. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the

___ day of _____, 1998, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ___ day of _____, 1998, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward