

ORDINANCE NO. 834 - C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA AMENDING CHAPTER 8, "TOW SERVICES" WITHIN TITLE 4 OF THE PACIFICA MUNICIPAL CODE, RELATING TO THE ROTATIONAL TOW PROGRAM

Section 1. The City Council finds as follows:

WHEREAS, the City of Pacifica, pursuant to the police powers delegated to it by Article 11 of the California Constitution, has the authority to enact laws, which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City has a legitimate interest in protecting the health, safety and well-being of its citizens; and

WHEREAS, the City desires to regulate the operation of non-consensual tows in this city and to provide for an orderly removal of vehicles from public property as authorized by California Vehicle Code section 21100 *et seq.*

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

Section 2. Chapter 8 Amendment.

Chapter 8, "Tow Services," within Title 4 "Public Safety" shall be amended to add the following with additions denoted by underlined text and deletions denoted by ~~strike-through text~~:

"4-8.02. Short title.

This ordinance shall be known as the "Rotational Tow Program".

4-8.03. Rotational Tow Program for non-consensual tows.

(a) A Rotational Tow Program is established to allow for towing services for non-consensual tows, in accordance with this chapter.

(b) No person shall perform towing services for a non-consensual tow for the Police Department unless such person has obtained a non-exclusive tow service franchise from the city. The Police Chief is hereby authorized, with the approval of Council, to enter into and oversee tow franchise agreements for non-consensual tow services on public property, on behalf of the city, subject to the rules and regulations in state law and this chapter. For purposes of this chapter, "non-consensual" shall mean tows that are requested because the vehicle is subject to impound, driven by a driver who is arrested, detained or incapacitated in accordance with the California Vehicle Code, including but not limited to, sections 14602.6, 22651, and 22655.

(c) Participants in the Rotational Tow Program shall at all times be subject to the schedule of fees which are established and approved by the Police Chief and Council, and provided for in the California Vehicle Code.

(d) A tow franchise shall not be required for:

(1) Operators or drivers performing tows that are not non-consensual tows generated by the Pacifica Police Department;

(2) 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; or

(3) An officer or employee of the city in the course of his or her official duty.

(e) Each franchisee shall be required to pay a per-vehicle, franchise fee to the city. Such fee shall be in an amount described in the city's master fee schedule as set forth in the tow franchise agreement, and shall not exceed the city's reasonable costs of administering the Rotational Tow Program. 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.

4-8.04 Eligibility.

(a) Only tow operators who have been granted a non-exclusive tow service 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 Police Department 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 telephone numbers of any parent or subsidiary company;

(2) If applicable, a complete and executed copy of the most recent City of Pacifica tow franchise agreement for tow vehicle services; and

(3) Any other information deemed reasonably necessary by the Police Chief, or designee, to determine whether the requested franchise should be granted.

(c) Upon receipt of a complete application, the Police Department shall investigate the facts listed in the complete application supporting inclusion in the Rotational Tow Program. Within 30 days after completion of the investigation, the Police Chief may recommend to Council that the applicant be granted a franchise and placed on the Rotational Tow Program list unless, the Police Chief, 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 police chief may require pursuant to this chapter;

(2) The owner, operator, applicant, or the Police Department's experience with the owner, operator or applicant, demonstrates an inability or unwillingness to render prompt and efficient police-generated non-consensual tow service;

(3) The police chief 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 list within the last twenty-four months;

(5) A material statement made in the application is untrue;

(6) A fact exists of which the Police Chief 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 the city limits;

(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, per the tow franchise agreement, upon receiving notification from the Police Department's communications division;

(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, 242 and 243); a violation of the California Health and Safety Code relating to narcotics or dangerous drugs (Health and Safety Code §§ 11352, 11352); a violation of Section 4461 (Unlawful Use of Forms of Registration, Plates, Permits, Placards, or Validation Tags); 4462(b) (Unlawful Display on Wrong Vehicle); 4463 (Forgery of Registration, Licenses, etc.); 4464 (Altered License Plates); or 5017(a) (Unlawful Display of VIN Plate) of Division 3 of the California Vehicle Code 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 Rotational Tow Program list already consists of three tow operators;

(11) The applicant fails to sign a tow franchise agreement; or

(12) The applicant does not have a valid business license (where required).

(d) The Police Chief 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 tow franchise agreement with the city, and any other such terms and conditions required by the Police Chief in accordance with this section.

(e) No more than three tow franchises shall be granted and be active at one time in order to ensure that there are a sufficient number of operators to fulfill the demand.

(f) The Police Chief may recommend to Council that the applicant be granted a tow franchise and placed on the Rotational 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 tow franchise agreement executed by the Police Chief, or his designee, as authorized by Council. Nothing contained in this chapter shall be deemed to require the Police Chief to grant any tow franchise if the Police Chief determines that grant of any such franchise is not in the best interest of the city and the public.

(g) 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 Police Chief.

(h) 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.

4-08.05 Grounds for suspension or removal from Rotational Tow Program.

(a) Should the Police Chief determine there is sufficient reason to authorize the suspension or removal, the Police Chief shall issue a written order to the tow franchisee clearly stating the reasons for such suspension or removal. 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 Section 4-08.04(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 days of its due date;

(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; or

(9) The tow vehicle service has violated any of the terms of the tow franchise agreement with the city.

(b) The Police Chief, upon learning of grounds for suspension or removal, shall by written notice, inform the tow franchisee of the action of suspension or removal. Within fifteen (15) 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 Police Chief. If the tow franchisee files a timely hearing request, the Police Chief or the Chief's 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 Police Chief, or the Chief's designee, shall issue a written decision within ten (10) days of the hearing.

4-08.06 Appeals.

Any person that has been denied participation in the Rotational Tow Program or suspended or removed from the Rotational Tow Program shall have the right to appeal such decision, by filing a written notice of appeal by following the procedure set forth in Chapter 4, "Appeals to the City Council," of the Pacifica Municipal Code."

Section 3. Severability.

If any section, subsection, subdivision, paragraph, sentence clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or unenforceable."

Section 4. California Environmental Quality Act (CEQA) Determination.

Adoption of this Ordinance is exempt from environmental review as the adoption of this Ordinance does not qualify as a "project" pursuant to Public Resource Code section 21065, since it can be seen with certainty that there is no possibility that adoption of the Ordinance would cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Section 5. Effective Date.

This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

Section 6. Publication; Certification.

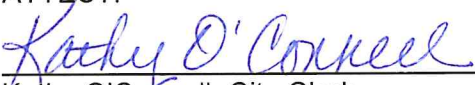
The City Clerk shall attest to the adoption of this Ordinance and cause the same to be published in accordance with State law.

PASSED AND ADOPTED this 11th day of June, 2018, by the following vote:

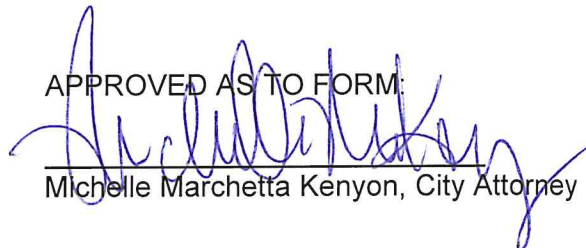
AYES: Martin, O'Neill, Digre, Vaterlaus, Keener
NOES: None
ABSTAIN: None
ABSENT: None



John Keener, Mayor

ATTEST:


Kathy O'Connell, City Clerk

APPROVED AS TO FORM:


Michelle Marchetta Kenyon, City Attorney