

INTRODUCED: 11/15/2010

REFERRED TO: Metropolitan Development Committee

SPONSOR: Councillor Vaughn

DIGEST: amends the Code to unify franchise zone tow contracts and abandoned vehicle tow contracts for efficient removal, storage and disposal of impounded or abandoned vehicles under the authority of the department of code enforcement, and further to provide authority for employees of the department of code enforcement to direct the impoundment of vehicles declared a public nuisance

SOURCE:

Initiated by: Department of Code Enforcement

Drafted by: Richard McDermott, Assistant Corporation Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL:



Date: November 11, 2010

CITY-COUNTY GENERAL ORDINANCE NO. _____, 2010

PROPOSAL FOR A GENERAL ORDINANCE to amend the Revised Code to unify franchise zone tow contracts and abandoned vehicle tow contracts for efficient removal, storage and disposal of impounded or abandoned vehicles under the authority the department of code enforcement, and further to provide authority for employees of the department of code enforcement to direct the impoundment of vehicles declared a public nuisance.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Article II of Chapter 611 the "Revised Code of the City and County," regarding the impoundment and removal of vehicles, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

ARTICLE II. IMPOUNDMENT AND REMOVAL OF VEHICLES

Sec. 611-201. Purpose.

It shall be the purpose of this article to provide for the impoundment of vehicles that, due to their location and/or condition, constitute a threat to the health, safety or welfare of the members of this community, and vehicles that have been involved in violations of law warranting temporary police or department of code enforcement custody of such vehicles.

Sec. 611-202. Definitions.

As used in this article and article III of this chapter, the following terms shall have the meanings ascribed to them in this section.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way, ~~or publicly owned property~~ or privately owned property.

Franchise wrecker or franchise wrecker services means the authority ~~within a designated zone~~ to tow and store vehicles on behalf of the city.

Franchise fee means that certain sum of money paid by the owner, operator, or authorized representative of same, of a towed vehicle by the franchised wrecker for remittance to the city, as a portion of the towing fee.

Impound, impounded and impoundment means the act of taking temporary custody of a vehicle and towing it from a public street, highway, or right-of-way or private property to an authorized secured storage area.

Inspector means a department of code enforcement employee authorized to serve notices for violations of this chapter or chapter 621, but who does not have general police powers.

Officer means and includes any member of the Indianapolis Metropolitan Police Department.

Police hold means an order from the Indianapolis Metropolitan Police Department to impound a vehicle because of its suspected involvement in criminal activity.

Storage fee means that certain sum of money charged the owner, operator, or authorized representative of same, for the safekeeping of the impounded or abandoned vehicle.

Tow means the act of lifting, pushing, pulling or removing a vehicle.

Towing fee means that certain sum of money charged the owner, operator, or authorized representative of same, of a towed vehicle.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy and wagon. It shall also include watercraft or aircraft of any type designed to transport one or more persons.

Wrecker means and includes any person engaged in the business of offering the services of a towing vehicle for use in removing, pulling, lifting or pushing another vehicle that is disabled, and shall include the employees, agents and towing vehicles used in the business of providing towing services.

Sec. 611-203. Certain vehicles declared a public nuisance; impoundment.

(a) Each of the following vehicles are hereby declared to be a public nuisance:

- (1) Any vehicle parked or left standing unattended upon any street or public place in the city in violation of any of the provisions of this Code or of any statute of the state;
- (2) Any vehicle known to have been stolen or wrecked and left standing on any street or public place, ~~or any vehicle the operator of which is unable to move such vehicle by reason of his or her incapacity from injury or arrest;~~
- (3) Any vehicle left standing in a public place and the operator of which is unable to move such vehicle by reason of his or her incapacity from injury or arrest;
- (~~3~~4) Any inoperable vehicle that is stored, maintained, or kept in violation of section 621-127 of this Code, and is not the property of a member of the armed forces of the United States who is on active duty assignment; ~~and~~
- (~~4~~5) Any vehicle upon which there is a police force hold or which that has been involved in four (4) or more violations of traffic or parking ordinances of the city for which notices of traffic or parking violations have been issued pursuant to this chapter, which notices of traffic or parking violations have not been paid, presented for compromise payment or slated into court pursuant to this chapter; and
- (6) Any vehicle upon which there is a police hold or that otherwise comes into the custody or control of an officer.

(b) A vehicle that constitutes a public nuisance may be impounded by an officer, an inspector or an agent authorized by the director of the department of code enforcement.

Sec. 611-204. Removal of vehicles constituting a nuisance.

~~Any officer, upon discovering a vehicle parked or left standing so as to constitute a public nuisance pursuant to the provisions of this article, shall cause the vehicle to be removed to an authorized storage place where it shall be impounded and detained as provided in this article. Such vehicles shall be released only upon order of the director of the department of code enforcement, or upon an order of the judge of any court having jurisdiction over the vehicle.~~

Sec. 611-204. Removal of vehicles involved in accident.

(a) Vehicles involved in an accident may be towed by any wrecker of the owner's or operator's choosing, provided that such wrecker is summoned and promptly responds to avoid creating a traffic hazard. However:

- (1) If an officer on the scene of the accident determines a traffic hazard has been created by the delay in the arrival of the owner's or operator's chosen wrecker, or if the owner or operator does not care to select a wrecker of his or her own choice, the officer may declare the vehicle a traffic hazard, and it shall become subject to the officer's order to the franchise wrecker service to remove it from the scene. The vehicle shall not be subject to impoundment but shall be towed to the destination selected by the owner or operator; or
- (2) If the owner or operator is under a disability by reason of injury or arrest, the vehicle shall be subject to impoundment upon order of the officer on the scene.

Sec. 611-205. Removal of vehicles; release.

~~(a) Any officer, upon discovering a vehicle parked or left standing so as to constitute a public nuisance, may cause the vehicle to be impounded. Impounded vehicles shall be released either upon payment by the owner, operator or authorized representative of same of the fees charged for impoundment and storage, or upon order of the director of the department of code enforcement, or upon order of any court having jurisdiction over the vehicle.~~

~~(b) All vehicles impounded by reason of being wrecked or stolen and all vehicles otherwise coming into the custody or control of such agency, and those impounded for parking violations, may be impounded in lots maintained for such purposes by franchised wreckers or in a lot authorized and chosen by the director of the department of code enforcement, but that lot shall not be operated by any city or county governmental agency. The attendant for any central lot shall collect the towing fees for the franchised wreckers and shall remit same to the wreckers monthly, along with monthly reports to the director of code enforcement in such form as the director shall prescribe.~~

Sec. 611-205. Storage, fees, and release of impounded vehicles.

(a) All impounded vehicles shall be stored in lots maintained by franchise wrecker services. Such lots shall not be operated by any city or county governmental agency.

(b) An owner or lien holder who claims an impounded vehicle shall be charged a towing fee and a per-day storage fee as provided in the contract entered into between the city and franchise wrecker.

(c) Upon the payment of towing and storage fees, upon order of either the director of the department of code enforcement or of the Indianapolis Metropolitan Police Department, or upon order of any court having jurisdiction over the vehicle, the impounded vehicle shall be released to the vehicle's owner, operator, other authorized representative, or lien holder.

Sec. 611-206. Procedure for selecting wreckers franchise wrecker services.

~~(a) *Franchise zones.* The director of the department of code enforcement shall invite bids from wreckers for providing franchised towing services on the geographic basis of zones or on some other basis of distribution of towing services within the consolidated city established by the director of code enforcement for the efficient organization of the removal of vehicles. The director shall establish specifications that shall include but not be limited to the wrecker's towing vehicles, equipment, storage lot~~

~~and insurance, and shall include same in all invitations to bid. Such specifications for bids shall be designed by the director in consultation with the Chief of the Indianapolis Metropolitan Police Department. Bids shall be submitted according to such specifications and the requirements of the city purchasing division. The director of code enforcement shall award each towing contract to the responsible and responsive bidder who offers to pay the highest franchise fee above the minimum franchise fee set by the director, or the director may reject any and all bids received and call for new bids. A written contract shall be executed between the department of code enforcement and each successful bidder.~~

~~(b) *Franchise fee.* Towing, storage and all other such fees that may be charged by a franchise wrecker as well as a minimum franchise to be paid by the wrecker shall be set by the director of code enforcement and included in the specifications for bids. The amount of the franchise fee shall be established by competitive bidding as provided in subsection (a). Funds realized from the collection of franchise fees shall be deposited in the county general fund.~~

~~(a) To provide for the efficient removal, storage or disposal of vehicles found in violation of this article, article III of this chapter, or IC 9-22-1, the director of the department of code enforcement, upon consultation with the director of the department of public safety and the chief of the Indianapolis Metropolitan Police Department, shall enter into contractual arrangements to provide franchise wrecker services which shall be exclusively used by the city, on behalf of the city and by any entity contracted with the city. The contract for these services shall be awarded on the basis of specifications prepared by the department of code enforcement in a request for proposal, a request for invitation to bid or a request to quote.~~

~~(b) Franchise fees or funds realized by the city from franchise wrecker services shall be deposited in the consolidated county fund or any fund required by state law.~~

~~**Sec. 611-207. Reserved.**~~

~~**Sec. 611-208. Procedure for removing and impounding vehicles.**~~

~~(a) Vehicles involved in an accident may be towed by any wrecker of the owner's or operator's choosing, provided that such wrecker may be summoned promptly to avoid creating a traffic hazard. If the officer on the scene of the accident determines a traffic hazard has been created by the delay in the arrival of the owner's or operator's chosen wrecker, or if the owner or operator does not care to select a wrecker of his own choice, the officer may declare the vehicle a traffic hazard, and it shall become subject to the officer's order to the contractor or other authorized wrecker to remove it from the scene. However, the vehicle shall not be subject to impoundment, but shall be towed to the destination selected by the owner or operator. If the owner or operator is under a disability by reason of injury or arrest, the vehicle shall be subject to impoundment upon order of the officer on the scene.~~

~~(b) Vehicles recovered as stolen or which come into the custody of the Indianapolis Metropolitan Police Department for other reasons shall be subject to impoundment upon order of the officer having control of the vehicle.~~

~~(c) All other vehicles subject to removal under this article, including those in violation of parking ordinances, may be towed by the franchised wrecker for each designated zone, upon notification and order by an officer, and may be impounded and stored pursuant to the provisions of section 611-205.~~

~~**Sec. 611-209207. Communications**~~

~~The Chief of the Indianapolis Metropolitan Police Department may authorize in writing each that franchised franchise wrecker to install emergency frequency monitor radios in its trucks wreckers for use in response to accident scenes and the locations of improperly parked for vehicles that constitute a public nuisance. The franchised franchise wrecker's tow trucks may only use such radios to respond to direct orders from the department's a dispatcher authorized by the department of code enforcement.~~

~~**Sec. 611-240208. Unauthorized wrecker at accident scene.**~~

~~(a) It shall be unlawful for any wrecker to proceed to the scene of an accident for solicitation purposes without having been summoned by either party involved in the accident or an officer at the~~

scene of the accident. Such unauthorized response is declared a traffic hazard and harmful to the health, welfare and safety of the people of the city, ~~and county, and, as~~ As such, those wreckers so responding are declared public nuisances and subject to impoundment procedures, upon order of the officer at the scene of the accident.

(b) It shall be unlawful for any wrecker to monitor for profit emergency frequency radios installed in tow trucks without having written authorization for an emergency radio installation by the Chief of the Indianapolis Metropolitan Police Department.

Sec. 611-~~244209~~. Liability of city, ~~county,~~ and wrecker.

The city ~~or county~~ shall not be liable for any loss or damage ~~which that~~ which that may occur to any vehicle ~~which that~~ is removed pursuant to the provisions of this article ~~or article III of this chapter~~. The Franchise wrecker shall indemnify and hold harmless the city and county, their its officers, agents and employees, from any loss, claim, judgment or damages arising from the ~~removal~~ removal impoundment ~~and~~ or storage of vehicles pursuant to this article ~~or article III of this chapter~~. The Franchise wrecker shall have sole responsibility for any articles of personal property which that may be contained in any vehicle at the time of its ~~removal impoundment~~; such articles of personal property shall not be held by the franchise ~~contract~~ wrecker in lieu of the service charges authorized herein but shall be returned by ~~him~~ franchise wrecker or ~~his~~ its agents to the owner thereof upon sufficient identification and proof of ownership. The officer directing the ~~removal impoundment~~ of a vehicle shall verify what personal property in plain view is contained in it prior to its ~~removal impoundment~~, report such articles to the Indianapolis Metropolitan Police Department ~~and/or or~~ on the incident report, and if possible, remove all property of value to ~~such agency's~~ the Indianapolis Metropolitan Police Department's property room pursuant to existing police regulations. If certain items of personal property cannot be stored by the ~~agency Indianapolis Metropolitan Police Department,~~ the Franchise wrecker company shall store said items, and the officer in charge shall furnish a copy of the list of said items to the franchise wrecker truck operator for the use of ~~the franchise wrecker service~~. Such list prepared by the officer shall be signed by the franchise wrecker operator after the ~~wrecker~~ operator has verified the existence of the items so listed.

Sec. 611-~~242210~~. Responsibility of wrecker at accident site.

A wrecker directed by an officer or the Indianapolis Metropolitan Police Department's dispatcher to remove vehicles from the scene of any accident shall clean the street or accident location of all debris caused by the accident.

Sec. 611-~~243211~~. Emergency warning lights.

No wrecker shall use emergency warning lights of any color at any time, but may use illuminated amber lights at the scene of an accident.

Sec. 611-~~244212~~. Notice of motor vehicle removed.

(a) Whenever a ~~motor~~ vehicle has been ~~removed impounded,~~ the franchise wrecker who moved said vehicle shall, within two (2) hours, give or cause to be given notice to the Indianapolis Metropolitan Police Department of the fact of such ~~removal impoundment~~ and the reasons therefore and of the manner in which such vehicle may be reclaimed. Any such notice shall also be given to the proprietor of the storage lot or garage to which such vehicle is removed.

(b) Such notice shall include:

- (1) A description of the vehicle;
- (2) Its license number;
- (3) The date and time of its removal;
- (4) Location from where it was removed;
- (5) Its present location;

- (6) The name and address of its owner and last operator, if known;
 - (7) Its final disposition; and
 - (8) The reason for its removal.
- (c) Notice is not required in the event:
- (1) The owner or person in charge of such vehicle signs a release from such notice at the scene of the tow;
 - (2) The reason for the ~~motor vehicle's~~ removal of the vehicle was not an alleged violation of law; and
 - (3) The wrecker agrees and keeps such release on file for a period of thirty (30) days.

Sec. 611-213. Impounded and unclaimed vehicles declared abandoned.

Any vehicle that has been impounded for a period of more than twenty (20) days and that remains unclaimed by an owner or owner's agent is deemed to be abandoned and may be disposed of in accordance with article III of this chapter and IC 9-22-1.

SECTION 2. Sections 611-302 through 611-307, inclusive, of the "Revised Code of the City and County" regarding definitions, departmental responsibilities, and the storage, appraisals, disposal, and towing and storage fee charges for abandoned vehicles, respectively, hereby are amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 611-302. Definitions.

(a) The terms used in this article shall have the meanings ascribed to them in ~~IC 9-22-1-2~~ article II of this chapter and IC 9-22-1.

(b) ~~In addition to the definition of "officer" contained in IC 9-9-1.1-2 IC 9-22-1-2, "officer" shall also mean members of the division of inspections of the department of code enforcement who are authorized to impound vehicles.~~

Sec. 611-303. Responsibilities of the department of ~~public safety and the department of code enforcement.~~

(a) ~~The department of public safety and/or and the department of code enforcement shall be is~~ charged with the responsibility for the removal, storage and disposal of abandoned vehicles that have been impounded by the Indianapolis Metropolitan Police Department pursuant to article II of this chapter and/or IC 9-22-1-1 et seq. or IC 9-22-1, or that are otherwise determined to be abandoned.

(b) ~~The department of public safety or the department of code enforcement may enter into contractual arrangements for the disposal of vehicles that have been impounded pursuant to article II of this chapter and/or IC 9-22-1-1 et seq. and or have been declared abandoned pursuant to the provisions of IC 9-22-1-1 et seq.~~

(c) ~~The department of code enforcement shall also be charged with the responsibility for the removal, storage, and disposal of abandoned vehicles other than those designated in subsection (a) of this section.~~ The department of code enforcement may employ personnel, and acquire equipment, property and facilities, to facilitate the removal of abandoned vehicles.

(d) ~~The department of code enforcement may employ personnel, and acquire equipment, property and facilities, to facilitate the removal of abandoned vehicles.~~

(e) ~~The department of code enforcement may enter into contractual arrangements with a towing service to provide for the removal, storage and disposal of abandoned vehicles.~~

- (1) ~~The contract for these services shall be awarded on the basis of specifications prepared by the department of code enforcement in a request for proposal or request for invitation to bid or to quote.~~
- (2) ~~As a prerequisite for submitting a bid or quote, a towing service must maintain processing equipment capable of disposing of vehicles by crushing or similar means.~~

Sec. 611-304. Storage of abandoned vehicles.

Abandoned vehicles ~~which~~ that are removed pursuant to ~~IC 9-9-1.4~~ IC 9-22-1 shall be towed and stored in an area designated by the department of code enforcement ~~which orders the towing and storage.~~

Sec. 611-305. Appraisals of vehicles.

(a) If a tagged vehicle or parts are not removed within seventy-two (72) hours of tagging, and the officer or inspector suspects the market value of the vehicle is five hundred dollars (\$500.00) or less, the vehicle shall be towed to a storage area, and ~~an appraisal shall be performed by an individual designated by the director of the department of code enforcement shall require an appraisal of the vehicle be made.~~ If the appraisal confirms the market value of the vehicle is five hundred dollars (\$500.00) or less, ~~the authorized towing service franchise wrecker~~ shall be instructed to provide for the immediate disposal of the vehicle to an automobile scrapyards. The department of code enforcement shall retain a copy of the appraisal and any photographs for two (2) years after the disposal of the vehicle or parts.

(b) If the appraisal indicates the market value of the vehicle is greater than five hundred dollars (\$500.00), the notification and disposal procedures in IC 9-22-1 shall be followed.

Sec. 611-306. Disposal of vehicles.

Vehicles ~~which~~ that have been towed to a storage area and have not been claimed by the record owner or lienholder within the statutory time period shall be disposed of by means of a public sale in the manner provided by ~~IC 9-22-1-2 or~~ IC 9-22-1-23.

Sec. 611-307. Towing and storage charges.

~~(a)~~ An owner or lienholder who claims a vehicle impounded and declared abandoned under the provisions of this ~~chapter article or article II of this chapter~~ shall be charged a towing fee and a per-day storage fee as provided in the ~~contract entered into between the city and franchised wreckers contractual arrangements for franchise wrecker services~~ under article II of this chapter. The storage fee shall be allowed to accumulate for a maximum period of sixty (60) days.

~~(b) Except as specified in subsection (a) above, an owner or lien holder who claims a vehicle removed and stored by the department of code enforcement shall be charged a towing fee, and a per day storage fee, consistent with the towing and storage fee set out in the contract entered into between the city and the franchised wreckers contractual arrangements for franchise wrecker services under Article II of this chapter. The storage fee shall be allowed to accumulate for a maximum period of sixty (60) days.~~

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this ____ day of _____, 2010, at ____ p.m.

ATTEST:

Ryan Vaughn
President, City-County Council

Melissa Thompson
Clerk, City-County Council

Presented by me to the Mayor this ____ day of _____, 2010, at 10:00 a.m.

Melissa Thompson
Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2010.

Gregory A. Ballard, Mayor