

**South Portland City Council
Position Paper of the Interim City Manager**

Subject:

ORDINANCE #5-16/17 – Amending Chapter 14, “Licenses, Permits and Business Regulations Generally” and Chapter 15, “Motor Vehicles and Traffic,” regarding wreckers and vehicle towing. Passed first reading on 10/17/16. ROLL CALL VOTE. Passage requires majority vote.

Position:

The City Council discussed proposed amendments to Chapter 15, regarding wreckers and vehicle towing at its October 12, 2016 workshop and passed first reading on October 17th. City staff is recommending amending the ordinance language after two incidents involving ordinance violations that were acted on by the City Clerk

The amendments discussed at that workshop were in the following sections:

Chapter 14

Sec. 14-8. Standards for denial, suspension or revocation.

Chapter 15

Division 1. Generally

Sec. 15-269. Purpose.

Sec. 15-270. Definitions.

Sec. 15-271. Minimum continuous regulations.

Sec. 15-272. Regulations may be promulgated by Chief of Police

Sec. 15-273. Rates for Services.

Sec. 15-274. Disposition of abandoned vehicles.

Sec. 15-275. Release of vehicles impounded pursuant to provisions for towing parked vehicles.

- Sec. 15-276. Removal of towed vehicle or parts thereof from wreckers' lot.
- Sec. 15-277. Enforcement.
- Division 2. License
- Sec. 15-278. Required.
- Sec. 15-279. Investigation; issuance or denial.
- Sec. 15-280. Insurance required.
- Sec. 15-282. Transferability.
- Sec. 15-283. Grounds for revocation, suspension or denial.
- Sec. 15-284. Appeals.
- Sec. 15-285. Violation.

Police Chief Ed Googins will be available at Monday's meeting to address any questions the Council may have regarding these amendments.

These amendments were discussed at the October 12, 2016, passed first reading on October 17, 2016 and is in order for second reading and action

Requested Action:

Council passage of ORDINANCE #5-16/17.



Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON H. GERRISH
Interim City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDINANCE #5-16/17

THE COUNCIL of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally", and Chapter 15, "Motor Vehicles and Traffic" of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (additions are underlined; deletions are ~~struck-out~~)

Chapter 14

LICENSES, PERMITS AND BUSINESS REGULATIONS

GENERALLY* **ARTICLE I. IN GENERAL**

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Sec. 14-8. Standards for denial, suspension or revocation.

(a) Generally applicable standards.

In addition to any other specific provision of this Code authorizing action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:

- (1) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
- (2) Failure to notify the City Clerk of any change of material fact set forth in the license application;
- (3) The applicant's or the licensee's business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
- (4) Noncompliance of the licensed premises or its use with the Code of Ordinances, including any land use ordinances, or the applicant/licensee has violated one of more provisions of this Chapter or other City ordinances, including, without limitation, the City's zoning

- and licensing ordinances;
- (5) Conditions of record such as waste disposal violations, health or safety violations, or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises or other such conditions caused by persons patronizing, visiting or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
 - (6) Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises;
 - (7) The applicant's or licensee's real or personal property taxes, plus any and all accounts of the applicant or licensee, payable to the City, do not comply with Section 14-7 of this Article;
 - (8) The licensee has violated any provision of this Code in the course of the conduct of the activity or device for which the license or licenses have been applied for, or have been issued; or
 - (9) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof.

(b) Background checks.

In addition to other requirements stated in this Chapter, background checks are required of the following applicants before a license shall be issued: food service establishments with alcohol; massage therapists; pawnbrokers; peddlers and solicitors; second hand dealers; temporary vendors; holders of a taxicab certificate of public necessity; [wrecker and towing business drivers for each driver at least once every 5 years](#); and taxicab drivers. Background checks are also required of the following applicants before a license shall be renewed: massage therapists; holders of a taxicab certificate of public necessity; [wrecker and towing business drivers for each driver at least once every 5 years](#); and taxicab drivers. Failure to submit required releases for a background check is grounds for denial of a license. The cost of the background check shall be borne by the applicant.

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CHAPTER 15

MOTOR VEHICLES AND TRAFFIC*

ARTICLE VIII. WRECKERS AND VEHICLE TOWING.

Division 1. GENERALLY.

Sec. 15-269. Purpose

In order to protect the safety of persons who operate motor vehicles within the corporate limits of the city, to ensure that the streets and public ways of the city remain open and free of hazard to the public and to further effectuate the efficient enforcement of the city's traffic, parking, snow removal and other regulatory ordinances, it is determined necessary to ensure by licensing and regulating persons engaged in the business of providing to the general public and the City of South Portland's Police Department vehicle wrecker or towing and required repair services, to establish rates for such services performed at the request of the Police Department, to regulate the storage and disposition of vehicles so towed at the request of the Police Department, and to set fees and penalties for the enforcement thereof.

Sec. 15-270. Definitions

The following words and terms as used in this article shall have the common meanings ascribed thereto, except that the definitions set forth in Chapter 1, in Article 1 of this Chapter and in this section shall apply, unless the context clearly indicates a different meaning:

Night, weekend or holiday release hours means weekdays between the hours of 5:00 pm and 7:00 am, Saturdays, Sundays or holidays.

Storage and release facility means the real property and any structures thereon to which wreckers tow or transport motor vehicles for storage until the vehicle owner claims the vehicle.

Towing list means a list maintained by the police department containing the names of those wreckers licensed by the city to respond to requests for the towing of vehicles made by the Police department. The towing list itself shall consist of two lists:

- (1) A primary list of wreckers capable of having a wrecker vehicle at a scene within twenty (20) minutes of a towing request by the Police department.
- (2) A secondary list to be used by the Police Department when the wreckers in the primary list are not available which shall include but not be limited to any wrecker with a history of response times of more than twenty (20) minutes or other non-responsive behavior.

Wrecker means a person engaged in the business of, or offering the services of, a wrecker vehicle or towing service, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designed for that purpose.

Wrecker vehicle means a motor vehicle intended to be used to tow or otherwise transport other motor vehicles.

Sec. 15-271. Minimum continuous regulations.

A. The following minimum regulations will be met on a continuous basis by all licensees:

- (-1) Licensees shall operate and maintain storage and release facilities within the city, or within a radius of five (5) miles from South Portland City Hall, as may be necessary for safe and proper conduct of towing activities.
- (2) Towing equipment used by a licensee to perform services under this article shall only be used by said licensee and not by other licensees or otherwise. Any changes in licensee's towing equipment during the license year shall be immediately provided to the City Clerk for review and approval by the eChief of police or his/her

designee.

- (3) Licensees shall permit the eChief of Ppolice or his/her designee to conduct one (1) regular and two (2) random inspections of each wrecker vehicle during the term of the license.
- (4) Licensees shall permit the Cchief of Ppolice or his/her designee to conduct one (1) regular and two (2) random inspections of each storage and release facility during the term of the license.
- (5) Licensees on the towing list shall not employ, utilize the services of, or rely upon the advice of, sworn members of the South Portland Police Department in the regular conduct of their business, even if such services or advice are provided without pay or other remuneration.
- (6) No wrecker operator, owner or employee shall, during the course of business, engage in any rudeness, threats, loud arguments, fights or other disturbances. A wrecker operator, owner or employee shall not, during the course of business, harass, threaten, or assault another person or intentionally damage, destroy, or threaten to damage or destroy any property or in any other manner engage in conduct detrimental to the orderly, safe, and efficient towing of a vehicle.
- (7) No wrecker operator, owner or employee shall during the course of business use any illegal drugs or alcohol. No licensee shall condone or permit the use of any illegal drugs or alcohol by an employee.
- (~~85~~) Licensees shall maintain such records as required by this article and any regulations promulgated by the eChief of Ppolice pursuant to section 15-272 and shall permit their inspection by the eChief or his/her designee during normal business hours.
- (~~96~~) By the 10th day of each month, licensees shall forward copies of receipts for all services provided under this article during the prior month to the eChief of Ppolice or his/her designee.
- (~~107~~) Vehicles must be towed or carried, not driven, to storage facilities.
- (~~118~~) Licensees must provide a secure storage facility as approved by the eChief of Ppolice or his/her designee during the license approval process. There shall be no change in the approved storage facility during the license year without the prior approval of the Cchief of Ppolice or his/her designee.
- (~~12~~) When the owner/operator of a vehicle being towed is not present at the time of the tow, the wrecker operator must sign and be given a copy of the Police Department's Inventory Sheet. The Inventory Sheet shall list the owner or operator to whom the vehicle may be released, unless a hold is placed on the vehicle. Additional authorized persons to whom the vehicle may be released may also be included on the form.
- (139) No vehicle shall be towed to any storage and release facility or other property outside of the city unless pursuant to subsection (1) of this section or unless it has been unclaimed for thirty (30) days and only upon the prior written notice to the Ppolice eChief or his/her designee.
- (140) The pPolice eChief or his/her designee must be notified of any unclaimed vehicle by forwarding a copy of the invoice or towslip for any unclaimed vehicle once a month

to the Police Chief or his/her designee. Said documents shall be forwarded by the tenth day of each month and shall include documentation for each vehicle in licensee's possession that remains unclaimed on the last day of the preceding month.

- (154) In the event of any vehicle being towed or transported following an accident, Licensees shall clean the accident area of all nonhazardous vehicular debris resulting from the accident.
- (162) Licensees shall not make any repairs to vehicles without the consent of the owner.
- (173) Licensees shall advise vehicle owners at the time the owner arranges to retrieve the vehicle and prior to its release of the specific amount of any release fee that will be charged pursuant to section 15-273(d). If the licensee is going to require cash payment by any owner, the licensee must so advise the owner at the time the owner arranges to retrieve the vehicle and prior to its release.
- (184) Licensees shall defend, indemnify and hold the city harmless from all claims for damages to property and injuries to persons resulting from the licensees' negligence or intentional misconduct in the towing or storage of vehicles pursuant hereto.
- (195) Licensees shall conspicuously post current rates for services under this article at the release facility.
- (2046) Licensees shall release vehicles at the approved storage and release facility within one (1) hour of the owner's request and payment of any applicable fees.
- (21) Upon payment of the towing fee, licensees shall give the vehicle owner a printed receipt that includes the name of the towing company, the name of the wrecker operator, and the towing company's current address and phone number. The receipt shall itemize the cost of towing, storage and any other fees paid by the vehicle owner. No vehicle may be released without notification to the vehicle owner or other responsible party as to where, when and to whom the vehicle was released.
- (22) If the vehicle is released to someone other than the owner or the person listed on the Inventory Sheet, a copy of that person's identification must be forwarded by the licensee to the Chief of Police or his/her designee along with receipts from City tows by the 10th day of every month. If the person whose identification is requested refuses to allow the licensee to make a copy of the identification, the licensee should immediately call the Police Department to seek further direction on how to proceed.
- (2347) Licensee shall require owner identification when releasing a vehicle. If the release occurs outside of night, weekend or holiday release hours as defined herein, the licensee shall make a photocopy of the owner identification provided. If the person whose identification is requested refuses to allow the licensee to make a copy of the identification, the licensee should immediately call the Police Department to seek further direction on how to proceed. If the release occurs during night, weekend or holiday release hours as defined herein, the licensee shall record the driver's license number of the owner.
- (24) Any change in insurance coverage, tow vehicles, storage location, or employees shall be reported to the City Clerk within five (5) days of the change. A copy of any new employee's driver's license must accompany the notice.

B. The Police Department shall observe the following procedure for maintaining the towing list and contacting wreckers for service calls:

- (1) Notwithstanding that wreckers will initially be assigned to either the primary or secondary list based on their response time of twenty (20) minutes, the Police Department shall move wreckers with a history of unavailability or slow response time from the primary list to the secondary list and may move wreckers with a history of satisfactory response time from the secondary to the primary list.
- (2) The Police Department shall call wreckers on the primary list on a rotating basis.
- (3) The Police Department may contact wreckers on the secondary list as needed.

Sec. 15-272. Regulations may be promulgated by Chief of Police.

The Chief of Police is hereby authorized to promulgate regulations not inconsistent with this article to carry out the intent of the article. All licenses issued pursuant to this article shall be subject to such applicable regulations as are adopted hereunder either prior to or after the date of the issuance thereof.

Sec. 15-273. Rates for services.

(a) The maximum rates for services regulated under this article shall be as follows:

- (1) Crash tows: \$~~12500~~.00 per tow.
- (2) Tows other than crash tows: \$~~10085~~.00 per tow.

A towing fee accrues when the vehicle is considered "hooked" to the wrecker, i.e., when the vehicle has been physically connected to the wrecker in some fashion.

- (b) Recovery charges: Where a vehicle is off-road, submerged, rolled over or otherwise requires special equipment for retrieval before it can be towed, a charge of \$80 may be assessed in addition to the towing fee stated in (a). If the recovery takes longer than one hour, a rate of \$80.00 per hour after the first hour may be charged.
- (c) Storage charges: \$30.00 per day, after 24 hrs.
- (d) Vehicle release: When an owner requests release of the vehicle during night, weekend or holiday release hours as defined herein, an additional charge of \$25.00 may be assessed. If a vehicle is released outside of night, weekend or holiday release hours as defined herein, no charge shall be assessed for the release.

Sec. 15-274. Disposition of abandoned vehicles.

- (a) The licensee shall comply with the procedures set forth in Title 29-A M.R.S.A. Sections 1851 - 1861, Abandoned Vehicles. Whenever a licensee notifies the Secretary of State that it is in possession of an abandoned vehicle, it shall also provide a copy of such notification to the Chief of Police or his/her designee.
- (b) In the event of an unclaimed or abandoned vehicle, the licensee's sole remedy shall be as outlined in Title 29-A M.R.S.A. Sections 1851 - 1861 regarding unclaimed and abandoned vehicles.

- (c) A copy of Title 29-A M.R.S.A. Sections 1851 - 1861 shall be issued to each licensee and shall be available to the public in the Ccity Clerk's office.

Sec. 15-275. Release of vehicles impounded pursuant to provisions for towing parked vehicles.

Whenever a vehicle has been removed and stored pursuant to Ppolice Department request, it shall not be released until the provisions of section 15-44 concerning the payment of waiver fees and charges owed to the city have been complied with.

Sec. 15-276. Removal of towed vehicle or parts thereof from wreckers' lot.

No vehicle or part or accessory thereof that has been towed by Ppolice Department request shall be removed from the possession or premises of the licensee or owner of the storage area by any person, including the owner of the towed vehicle, except in accordance with section 15-44. Nothing herein shall prohibit the licensee from acting in accordance with this article. Upon written application of the owner of a vehicle being held by the licensee, the eChief of Ppolice or authorized representative may make suitable arrangements for the retrieval of specified property if satisfied that there are exigent circumstances requiring retrieval prior to the owner reclaiming the vehicle.

Sec. 15-277. ~~Enforcement. (Reserved.)~~

- ~~(a) Any violation of this division shall be punishable by a fine not exceeding one hundred dollars (\$100.00), and each day that a violation continues shall be treated as a separate offense.~~
- ~~(b) The chief of police or his/her designee may, prior to commencement of court action, issue a notice of violation to any person charged with a violation of this division. Said notice shall be in a form approved by the corporation counsel and shall provide a method by which a person charged with a violation of this division may waive court action with respect to the violation by payment of a specified fee within a stated period of time.~~

Division 2. LICENSE.

Sec. 15-278. Required.

- (a) No wrecker shall tow any vehicle within the city by pPolice Department request pursuant to this chapter nor shall any wrecker be placed on the towing list unless such wrecker is currently licensed.
- (b) Only one license may be issued to a legally organized business and its business affiliates. Business affiliates are those persons and/or entities that (a) either directly or indirectly, one controls or has the power to control the other; or (b) a third party controls or has the power to control both. Evidence of "control" includes, but is not limited to: interlocking management or ownership; shared facilities and equipment; common use of employees; or a business entity organized after the removal or

suspension of a licensee from the towing list that has same or similar management, ownership, or employees as the original licensee.

- (c) Each licensee shall own/lease and operate its own wrecker(s), which for the purposes of this Article, must be used exclusively by the licensee.
- (d) All licenses issued pursuant to this section shall be granted, granted with conditions, denied, suspended or revoked by the City Clerk, subject to appeal to the City Council.

Sec. 15-279. Investigation; issuance or denial.

- (a) Within thirty (30) days after receipt of an application under this ~~Article~~ division, the Chief of Police shall conduct an investigation to determine: the truth, accuracy and adequacy of the information contained in the application; the ability of the applicant to furnish the required service and to abide by the regulations and provisions set forth herein and established pursuant to section 15-272; the applicant's past record of performance in any wrecker or towing business and the adequacy of the applicant's equipment and storage facilities. Upon completion of the investigation, the Chief of Police shall forward a report of the investigation to the City Clerk, who shall either grant, grant with conditions, or deny the license and notify the applicant in writing of such decision and the findings and reasons, if any, for denial of the license. Upon request of a licensee, the ~~C~~ lerk shall forward to the licensee a copy of this article and any regulations adopted pursuant thereto.
- (b) The following information must be submitted prior to commencement of the investigation:
 - (1) Evidence that the applicant is a legally organized business. This may include business filings with the Secretary of State; copies of deeds, leases, rental agreements and Assessor's records; names and addresses shown on federal and state tax filings; copies of insurance coverage for the premises and for the employees therein; advertising; and motor vehicle registrations;
 - (2) Location, size and security features of the storage facility on which towed vehicles will be stored;
 - (3) Location of release facility to which the public must come to claim stored vehicles;
 - (4) List of towing equipment, including make, model, year, VIN number, size, ~~and~~ capacity and, where applicable, vehicle registration. Applicant shall supply such evidence as the Clerk may require that demonstrates that the towing equipment will be used exclusively by that single business in connection with the towing list rotation;
 - (5) Description of the two-way mobile communications and base station to be used for each wrecker and at the office where calls are received;
 - (6) Statement of willingness to provide release of vehicles on a continuous twenty-four-hour-a-day basis each day of the year;
 - (7) Copy of driver's license of all employees operating wreckers in response to calls from the Police Department so that a background check on drivers may

be conducted for each driver at least once every five (5) years; and

(86) Such other information as the Clerk may require on the license application.

Sec. 15-280. Insurance required.

(a) No wrecker shall be issued a license until the applicant has deposited with the eClerk two copies of the following policies, and the eClerk shall provide one copy to the Chief of Police:

(1) Garagekeeper's legal liability policy covering the premises, including fire, theft, windstorm, vandalism and explosion, in the amount of at least twenty- five thousand dollars (\$25,000.00), with each vehicle suffering damage or loss being deemed a separate claim.

(2) Towing/wrecker service commercial liability policy covering the operation of the licensee's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of four hundred thousand dollars (\$400,000.00) combined single limit for personal injury and property damage, or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. §8001 et seq) as amended from time to time, whichever amount shall be greater. Each wrecker insured shall be identified by make, model and vehicle identification number (VIN).

(3) Road service liability coverage for the lifting, hoisting and towing of vehicles must be included in the licensee's garagekeeper's legal liability policy.

(b) Each policy required above shall name the City as an additional insured and the certificate evidencing the same shall be in a form satisfactory to the corporation counsel. The licensee shall maintain such insurance at all times during the term of the license, and the licensee shall provide the City Clerk with not less than thirty (30) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.

(c) The lapsing or cancellation of any policy as required hereinabove shall result in the immediate termination of the wrecker's license without any action on the part of the city.

Sec. 15-281. Fee.

Annual license fees shall be as provided in chapter 14, Section 14-3.

Sec. 15-282. Transferability.

Transferability of licenses issued under this Articledivision shall be as provided in Chapter 14.

Sec. 15-283. Grounds for revocation, suspension or denial.

A license issued under this Articledivision may be suspended, or revoked and an application for a license may be denied by the City Clerk upon a determination that the licensee, or applicant, or wrecker operator:

(a) Violated any of the requirements or regulations established herein or by the Chief

of Ppolice under this article; or

- (b) Has provided unsatisfactory services for city-authorized towing or the business has been the source of consumer complaints that have been found to be valid; or
- (c) Has been convicted of any crime or has had his/her driver's license revoked or suspended by the State of Maine at any time during the five (5) years immediately preceding application; or has been imprisoned at any time during the preceding five years; ~~provided that said conviction was for an offense which is rationally related to the purpose of licensing wreckers.~~

No license shall be suspended or revoked without a hearing conducted not less than seven nor more than thirty days after written notice has been served on the licensee personally or by first class mail, postage prepaid. The notice shall contain a generalized statement of complaint.

Sec. 15-284. Appeals.

- (a) An appeal to the City Council may be taken by any person aggrieved by the granting, granting with conditions, denial, suspension or revocation of a license hereunder by the Ccity Clerk by filing a written notice of appeal in the office of the City Clerk within thirty (30) days of the decision appealed from. Such notice of appeal shall state the basis for the appeal. Within twenty (20) business days after the filing of the notice of appeal, the City Council shall hear the appeal and may affirm, reverse or modify the decision appealed from.
- (b) An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80 B of the Maine Rules of Civil Procedure.

Sec. 15-285. Violations.

Any violation of this Article, or any regulations adopted hereunder, may subject the licensee to any of the following penalties:

- (a)Written warning;
- (b)Removal from the primary towing list and placement on the secondary list;
and/or
- (c)Referral of the matter to the City Clerk for further action on the license.

In addition, Aany violation of this Articledivision shall be punishable by a fine not exceeding one hundred dollars (\$100.00), and each day that a violation continues shall be treated as a separate offense.

Fiscal Note: Less than \$1,000

Dated: October 17, 2016