



TOWN OF FALMOUTH

ORDINANCE NO 71-2014

An Ordinance Amending the Code of Ordinances Regarding Wreckers and Vehicle Towing

Be it ordained by the Town Council of the Town of Falmouth, Maine, in Town assembled, that the Falmouth Code section 17-82 is hereby amended to read as follows:

Sec. 17-82. Authority to remove vehicle while illegally parked.

Any vehicle parked or standing in a manner described in sections 17-81, 17-89 and 17-91 may be removed by or under the direction of or at the request of the chief of police or any police officer to a garage or storage place. Such police officer may use such force as may be necessary to enter such vehicle and cause the same to be placed in a condition to be moved and may call upon wreckers on the towing list maintained pursuant to section 17-82.1 to remove the vehicle. Notwithstanding any language herein contained, the removal and storage of a vehicle pursuant to this chapter, and the payment of the charges specified herein, shall in no way relieve or prevent prosecution for the violation of any provision of this chapter.

Be it further ordained that the following section is hereby added:

Section 17-82.1. Wreckers and vehicle towing.

(a) Purpose.

In order to ensure that the streets of the town remain safe, open and free of hazard and to further effectuate the efficient enforcement of the town's traffic, parking, snow removal and related ordinances, this section provides for licensing and regulating persons engaged in the business of providing vehicle towing and associated repair services at the request of the town police department; establishes rates for such services; and regulates the storage and disposition of vehicles so towed.

(b) Definitions.

As used in this section, the following words, terms and phrases have the following meanings except where the context clearly indicates a different meaning:

Storage and release facility means the real property and any structures thereon to which wreckers tow or transport 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 town to respond to requests by the police department for the towing of vehicles. 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 thirty (30) 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 thirty (30) minutes or failure to respond, as determined by the police department.

Wrecker means an individual or business entity offering towing or flatbed service, whereby 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, such as a tow truck or flatbed, intended to be used to tow or otherwise transport other vehicles.

(c) Minimum requirements.

The following minimum requirements shall be met on a continuous basis by all licensees:

- (1) Licensees shall operate and maintain storage and release facilities within a fifteen (15) mile radius of the police department headquarters at 2 Marshall Drive, Falmouth.
- (2) Licensees shall permit the chief of police or his/her designee to conduct one (1) regular and two (2) random inspections of each wrecker vehicle during the term of the license.
- (3) Licensees shall permit the chief of police 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.
- (4) Licensees shall maintain such records as required by regulations promulgated by the chief of police and shall permit their inspection by the chief or his designee during normal business hours.
- (5) Vehicles must be towed or carried, not driven, to storage and release facilities.
- (6) Licensees must provide a secure storage and release facility

(7) The police chief or his/her designee must be notified of any unclaimed vehicle by forwarding a copy of the invoice or tow slip 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.

(8) 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, unless otherwise directed by on-scene public safety personnel.

(9) Licensees shall not make any repairs to vehicles without the consent of the owner.

(10) Vehicles shall be released from storage in accordance with this section and regulations promulgated by the chief of police.

(11) Licensees shall defend, indemnify and hold the town harmless from all claims for damage to property and injuries to persons resulting from the licensees' negligence in the towing or storage of vehicles pursuant to this Article III.

(12) Licensees shall conspicuously post current rates for services under this section at the storage and release facility.

(13) Licensees shall release vehicles within one (1) hour of the owner's request and payment of any applicable fees.

(d) Maintenance of towing lists.

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, 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.

(e) Rates for services.

The maximum rates for services regulated under this section are as follows:

(1) Day call (7:00am to 7:00pm) \$85.00

(2) Night call (7:00pm to 7:00am) \$95.00

(3) Hooked – up drop \$25.00

(4) Recovery charges: Where a vehicle is off-road, submerged or otherwise requires special equipment for retrieval before it can be towed, a charge of \$70 per hour may be assessed in addition to the towing fee stated in (a).

(5) Storage charges: \$25.00 per day, after 24 hrs.

(6) Night or Sunday/holiday release: When an owner requests release of the vehicle between 7:00 pm and 7:00 am or on a Sunday or holiday, an additional charge of \$25.00 will be assessed.

For purposes of section 17-84(2), the rates in this section shall be the maximum fees allowed to be charged in connection with release of a vehicle.

(f) Disposition of abandoned vehicles.

(1) The licensee shall comply with the procedures set forth in Title 29-A M.R.S. Sections 1851 - 1859, Abandoned Vehicles.

(2) 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. Sections 1851 - 1859 regarding unclaimed and abandoned vehicles.

(g) Release of vehicles impounded pursuant to provisions for towing parked vehicles.

Whenever a vehicle has been removed and stored pursuant to police request for violation of this Article III, it shall not be released until the payment of penalty fees owed to the Town have been paid and the requirements of section 17-84 have been met.

(h) Removal of towed vehicle or parts thereof from wreckers' lot.

Upon written application of the owner of a vehicle, the chief of police or the chief's authorized representative, suitable arrangements may be made for the retrieval of specified personal effects, as defined in 29-A M.R.S. Section 1861, in the vehicle if there are exigent circumstances requiring retrieval prior to the owner reclaiming the vehicle.

(i) License required

(1) Wreckers wishing to be placed on the towing list must apply for a wrecker license on forms provided by the police department

(2) Within thirty (30) days after receipt of an application under this 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; 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 grant the license and place the wrecker on one of the towing lists or deny the license. The chief of police shall notify the applicant in writing of such decision and the findings and reasons, if any, for inclusion on the secondary towing list or for denial of the license, as the case may be.

(3) The following information must be submitted prior to commencement of the investigation:

- a. Location, size and security features of the storage facility on which towed vehicles will be stored;
- b. Location of release facility to which the public must come to claim stored vehicles;
- c. List of towing equipment, including size and capacity;
- d. Description of the two-way mobile communications and base station to be used for each wrecker and at the office where calls are received;
- e. Statement of willingness to provide release of vehicles on a continuous twenty-four-hour-a-day basis each day of the year;
- f. Such other information as the chief of police may require on the application.

(4) Licenses shall be valid until the wrecker is removed from the towing list at the wrecker's request or by the chief of police pursuant to the provisions of this section.

(j) Regulations may be promulgated by the chief of police.

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

(k) Insurance required.

(1) No wrecker shall be accepted on the towing list until the applicant has deposited with the chief of police copies of the following policies:

- a. Garage keeper'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.

b. 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 stated in Maine Tort Claims Act (14 M.R.S.A. §8001 et seq.) as the monetary limit of municipal liability, whichever amount shall be greater. Each wrecker insured shall be identified by make, model and vehicle identification number (VIN).

c. Road service liability coverage for the lifting, hoisting and towing of vehicles must be included in the licensee's garage keeper's legal liability policy.

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

(3) 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 town.

(l) Grounds for revocation, suspension or denial.

A license issued under this division may be suspended or revoked and an application for a license may be denied by the chief of police upon a determination that the licensee, applicant or wrecker operator:

(1) Violated any of the requirements or regulations established herein or by the chief of police under this ordinance;

(2) Provided unsatisfactory services for police requested towing; or

(3) 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 (7) nor more than thirty (30) 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 the complaint.

(m) Appeals.

(a) An appeal to the Town Council may be taken by any person aggrieved by the granting, granting with conditions, denial, suspension or revocation of a license hereunder by the chief of

police by filing a written notice of appeal in the office of the Town Clerk within thirty (30) days of the decision appealed from. Such notice of appeal shall state the basis for the appeal. Within thirty (30) business days after the filing of the notice of appeal, the Town Council shall hold a *de novo* hearing and may affirm, reverse or modify the decision appealed from.

(b) An appeal from any final decision of the Town Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

(n) Enforcement.

(a) Any violation of this ordinance 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 designee may, prior to commencement of court action, issue a notice of violation to any person charged with a violation of this ordinance. Said notice shall be in a form approved by the town attorney 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.

Attest: _____

Ellen Planer
Town Clerk
December 9, 2013