



2021 BOROUGH OF DUMONT ORDINANCE

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CHAE	✓			
ENGLESE	✓			
GORMAN	✓			
HARVILLA	✓			
ROSSILLO	✓			
STEWART	✓			
MAYOR LaBRUNO				
TOTALS	6			

Ordinance No. 1590

Date: August 10, 2021

Page: 1 of 11

Subject: Municipal Towing and Storage Services

Purpose: Amendment

Dollar Amount:

Prepared By: Marc Leibman, Esq.

Offered by:
Seconded by:

Englese
Chae

Certified as a true copy of an Ordinance Introduced and Passed on 1st Reading by the Governing Body of the Borough of Dumont on the above date at a Public Meeting by:

Jeanine E. Siek
Jeanine E. Siek, RMC, Municipal Clerk
Borough of Dumont, Bergen County, New Jersey

ORDINANCE ESTABLISHED PURSUANT TO N.J.S.A. 40A:11-5(1)(u) AND IN COMPLIANCE WITH N.J.S.A. 40:48 - 2.49 and N.J.S.A. 56:13-16(i) FOR MUNICIPAL TOWING AND STORAGE SERVICES

I. INTRODUCTION

The legislature promulgated a statute that requires a municipality to contract for towing and storage services. The services are to be provided pursuant to an ordinance that is nondiscriminatory and not exclusionary. The selected vendors shall comply with standards requiring prompt and secure services. The ordinance may further require the

vendor to comply with the applicable rules adopted by the Division of Consumer Affairs in the Department of Law and Public Safety.

This ordinance shall not be applicable to private property towing as defined in P.L.2018 Chapter 165.

This Ordinance replaces Ordinance 416 in its entirety.

II. DEFINITIONS

The basic terms encompassed within this ordinance shall utilize the terminology contained within the Department of Insurance rules and NJAC 11:38.1 et seq. and the definitions utilized in public law 2018 chapter 165 as follows for this ordinance:

- a. "After hours Release" Releasing vehicle after normal business hours,
- b. "After hours tow" a tow that occurs between 6:00 pm and 6:00 am the following day or
- c. "Amber lighting" high intensity emergency lighting strategically placed at or near the top of the tow vehicle and having been duly licensed by the State of New Jersey for said emergency lighting.
- d. "Adequate equipment"
- e. "Tow Truck" a commercial motor vehicle designed exclusively to lift or carry a motor vehicle(s) that have become disabled, wrecked or impounded for the police by means of lifting either the front or rear of the vehicle or placing it on a hydraulic bed. Each vehicle shall be equipped with emergency Amber lighting, registered in the State of New Jersey and insured by a company licensed to do business in the state. The tow trucks shall have painted on their outer doors the name of the applicant, its telephone number and USDOT number
 - i. "Light duty tow truck" is a tow truck used to recover vehicles up to 10,000 pounds.
 - ii. "Medium duty tow truck" is used to towing recover small commercial vehicles over 10,000 and under 26,000 pounds and or passenger vehicles that are unable to be recovered with the light duty tow truck or a flatbed.
 - iii. "Heavy duty tow truck" a manufactured truck with wrecker body used to recover vehicles of 26,000+ pounds GVW or greater and rated for no less than 50,000 pounds and equipped with air brakes for the towed vehicles.
 - iv. "Flatbed car carrier/tow truck" a vehicle designed to transport motor vehicles that have become disabled or wrecked without the need to have the vehicles tires on the roadway when being towed. The vehicle has a hydraulic bed for transporting the vehicle being towed.
 - v. "Crane/rotator" is it tow truck with an extendable boom that rotates to recover vehicles that are typically in unusual situations including those off-road.

- f. "Portable dollys / Go-jac dolly" are a set of wheels placed under either end of the vehicle being towed to enable it to be moved when the wheels are locked by brakes and/or transmission.
- g. "Winching" is the process of moving a motor vehicle by use of chains nylon slings or cables from a position that is not accessible for direct hookup by commensurable means. Winching shall not be included as the means by loading a towed vehicle onto a flatbed or other motor vehicle carrier from the roadway.
- h. "Basic towing services" means towing as generally defined together with other ancillary services as may be specified by regulation or ordinance which are components of a routine tow.
- i. "Decoupling fee" means a charge for release in a motor vehicle when the vehicle has been or is about to be lifted by or onto a tow truck but prior to the vehicle actually having been moved or removed from a location. There shall be no fee for decoupling.
- j. "Motor Vehicle" includes all vehicles propelled by other than muscular power, with the exception of those running on railroad tracks, motorized wheelchairs and skateboards.
- k. "Nonconsensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle regardless of the reason for the tow.
- l. "Impound" this is cured storage of a motor vehicle pursuant to a lawful order of a law enforcement agency.
- m. "Person" means an individual, sole proprietor, partnership, corporation, LLC or any other business entity
- n. "Owner" means an individual(s) with ten percent or more of the stock or membership of the applicant if the applicant is a LLC or corporation.
- o. "Private property owner" means the owner or lessee of a private property, or an agent of such owner or lessee, but shall not include a private property towing company acting as an agent of such owner or lessee.
- p. "Removal of debris" means the removal from the public road or highway used by the public for the purposes of vehicular travel consistent with the duty imposed pursuant to title 39:4 – 56.8.
- q. **"Towing Rates" are the published rates utilized by the New Jersey State police and available for review at the website www.GSTA.org unless otherwise limited by this ordinance.**
- r. "Public Accommodation" is a clean waiting area or lounge suitable for no less than two individuals and having a handicap accessible bathroom for use by individual waiting to retrieve their motor vehicle.
- s. "Rotation list" all of the vendors that are accepted for the two-year term will be placed on a revolving list for a specific interval of time when they shall be the municipality's exclusive tower.
- t. "Supplementary investigation" shall mean a new employee and/or owner/managing member that requires an inquiry by the police department.

- u. "Tow Yard" shall mean a location where the vendor stores the vehicle(s) recovered from the municipality that is within five miles from the municipal boundary and shall not be shared with any other business entity.
- v. "Vendor" shall mean the licensed tower placed on the municipal list of approved towers.

III. TOWING LIST

On odd numbered years by the first business day in the month of October, the municipality shall establish a list of Towers that shall not be transferable or assignable. The list shall specify the businesses authorized to remove motor vehicles from the roadways, municipal property and private property within the municipality. This list shall only apply when the request to tow is not made by the owner or operator of the vehicle but at the request of police officer, fire official or health officer. To be placed on the list, the applicant shall pay an initial licensing fee of \$500 and all reasonable administrative expenses incurred by the municipality. Applications to be placed on the towing list shall commence to be accepted during the second week of February and terminate on the last business day of that month. The list shall be for a two-year period.

Applicants shall be required to respond to a request to tow a motor vehicle within 20 minutes and 30 minutes for after hour tows. The response time may be expanded by 10 minutes during hazardous weather conditions.

Towing applications shall include a hold harmless and indemnify agreement by the applicant and by the majority Owner in favor of the municipality.

The clerk of the municipality shall advertise for Towers to be added to the towing list in the official publication for the municipality and on the municipality's website for fourteen days. The notice shall appear twice in the official publication for the municipality with no less than 10 days between the first and second publication.

IV. APPLICATION FORMAT – An application approved by the municipal attorney shall be made available on the Borough website, Police Department page and also available from the Police Department. The minimum requirements of the application shall require the applicant to set forth the following information:

- a. The full name, address and phone number of the applicant.
- b. The company name, address and phone number.
- c. If applicant is a corporation the names, addresses and phone numbers of the officers, directors, registered agents and each stockholder owning 10 percent or more of the issued stock.
- d. A 24 hour / 7 days a week emergency contact number(s).
- e. For each tow vehicle utilized by the tow operator in conducting the business, the year, make, model, vehicle identification number, type of vehicle, proof of registration and proof of insurance for the vehicle.

- f. The size and security features of the storage lot or space in which towed vehicles will be stored, including the number of spaces available and a designation of the lot as either "inside secured storage facility," or "outside secured storage facility."
- g. A listing of all equipment used or to be used in the towing operation together with a statement that the storage/towing yard is in compliance with local zoning regulation.
- h. Towing personnel who are authorized by the applicant to provide services on behalf of the applicant.
 - i. Name, residence and telephone number.
 - ii. New Jersey Driver's License Number and expiration date.
 - iii. Social Security Number.
 - iv. Signed statement by each person who provides services or owns 10% or more of any entity providing such services, certifying that they have not been convicted of a crime within the past 4 years, is not presently on probation, parole or supervised release and is not required to be on a list of sexual offenders. Persons and entities who/which cannot so certify shall be excluded from providing towing services but may appeal such exclusion to the Council which may, on good cause, grant an exception after hearing an appeal.

V. APPLICATION REVIEW & PROCESSING

- a. Applications shall be submitted to the Police Department who shall promptly transmit checks and proof of insurances to the Clerk. The police shall perform an examination of the applicant, the application, and facilities. The written comments and observations of the officer responsible for the review shall be submitted to the police chief.
- b. The applicant shall have adequate equipment and facilities to meet the municipality's needs within the geographic area specified by this ordinance.
- c. The minimum requirements for each tower shall include
 - i. background check on all owners of the company with 10 or greater percentage of ownership;
 - ii. background check on all tow truck operators permitted to serve the municipality for the vendor;
 - iii. all tow truck operators shall be the employees of the vendor with record keeping consistent with the Department of Labor requirements and shall comply with State and Federal laws and regulations concerning wages, hours and terms of employment.
 - iv. applicants or their employees having been convicted of a crime of moral turpitude within the last 4 years or required to be on a list of sexual offenders shall be deemed unqualified but may appeal this determination as provided for by this ordinance;

- v. vendors shall have experience towing for municipality or other public entity for a period of no less than two full years prior to applying for a license
- vi. towers shall be available 24 hours a day 7 days a week to tow a vehicle during their designated period on the rotation list and shall be available to have a vehicle retrieved Monday through Friday from 8:00 AM to 6:00 PM and either Saturday or Sunday from 10:00 AM until 2:00 PM. The facility does not need to be open for the removal of a motor vehicles on Federal or State holidays.
- vii. Storage capacity available outdoors for ten vehicles & indoor facilities for two vehicles on the day of the inspection
- viii. the storage yard must be within fifteen miles from the corporate boundary of the municipality, secured and enclosed by a sturdy fence or wall of no less than 6 feet high and have a sign identifying it as a storage yard for vehicles towed at the municipal request and the hours of operation to claim a motor vehicle;
- ix. outdoor storage yard shall have lighting from dusk to dawn
- x. Type, condition and design of equipment – The applicant shall have a minimum number of properly equipped clean tow trucks that are owned or with a conventional lease to the applicant/ operator for the following
 - 1. a flatbed car carrier/tow truck
 - 2. one conventional light-duty tow truck
 - 3. all tow trucks shall have painted on their outer doors the name of the tow truck operator, its telephone number and USDOT number
- xi. Insurance from a company authorized to do business in New Jersey (naming the municipality as an additional insured and requiring the municipality to be notified thirty days in advance of any termination or interruption of coverage)
 - 1. Workers Compensation for all employees as per statute
 - 2. Garage Keepers Coverage (\$150,000.00 coverage)
 - 3. On Hook Coverage
 - 4. Comprehensive General Liability Coverage (one million dollars)
 - 5. Automobile Liability with a single limit of one million dollars and an umbrella coverage for an additional million
- xii. After the inspection of the application and applicant by the police department, a formal recommendation of approval or denial by the police chief or his designee to the governing body shall be provided to the governing body. If a negative recommendation is forthcoming, the applicant shall be given no less than fifteen days' written notice prior to the meeting with the governing body explaining the reason for the denial so as to permit the applicant the opportunity to correct any deficiency or appeal any rejection.

- xiii. As part of the application, the applicant shall acknowledge the duty to promptly, within five business days, notify in writing the chief of police of any new employee engaged in towing motor vehicles and/or a change in ownership of the applicant in excess of ten percent by providing an certification as if re-applying.

VI. RATES –

A. Fees for towing and storage of private passenger vehicles, damaged in an accident or recovered after being stolen, may not exceed the fees established by the New Jersey Department of Insurance pursuant to N.J.S.A. 17:33B-47. Those towing and storage fees, which are set forth in N.J.A.C. 11:3-38.1, are incorporated herein by reference.

(1) Fee schedule for towing services, flatbed or wrecker (days, nights, holidays and weekends have one set price):

- (a) Class A vehicles, noncommercial, up to 5,000 pounds: \$125.
- (b) Class B vehicles, midsize trucks, 5,000 pounds to 10,000 pounds: \$225.
- (c) Class C vehicles, 10,000 pounds to 15,000 pounds: \$350.
- (d) Class heavy-duty, rate by hour: \$400 minimum.
- (e) Towing out of area of tow company yard: \$5 per mile.
- (f) Cleanup of debris on roadway: \$45.
- (g) Winching, if needed, or extra truck: \$75 per 1/2 hour.

(2) Storage fees.

- (a) Accidents and impounds: \$50 per day.
- (b) Inside storage (motorcycles, mopeds, etc.): \$50 per day.

(3) Pursuant to law, the fee schedules shall be reviewed by the New Jersey Commissioner of Insurance on an annual basis and may be revised if necessary. In the event the above schedules are revised by the Commissioner of Insurance, the revised fees shall be the maximum fees that may be charged by towing companies and this chapter shall be amended accordingly.

B. Fees for towing and storage of private passenger vehicles, other than those damaged in an accident or recovered after being stolen, may not exceed the fees set forth above.

C. The fees set forth on the schedule for towing rates are the maximum charges that shall apply to a private passenger automobile for basic towing services rendered as a result of an accident or theft recovery. There shall be no additional charges other than those provided herein, including

but not limited to flat bedding, waiting time, winching, cleanup cost, and additional labor when only basic towing services as defined are provided.

(1) The towing rates shall be calculated based on the total distance travelled from the tow vehicle's base of service to the job site and return, by the way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.

(2) Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.

D. The fees set forth on the schedule for storage fees are the maximum storage charges per twenty-four-hour period that shall apply to a private passenger automobile that is stored by a person as a result of an accident or theft recovery.

E. Trucks may be charged at a higher rate in line with customary and reasonable rates in the industry.

VII. Additional duties of the police department shall include but not be limited to the administration of municipal towing vendors as follows:

- a. the maintenance and publication of the schedule for all towers on the rotational list
- b. hold periodic auctions pursuant to statute for the sale and transfer of title to any motor vehicle remaining in storage
- c. maintain a list of all motor vehicles towed pursuant to this ordinance along with the name of the vendor, the date and time that the tower was contacted and the time that the tower arrived at the location where the vehicle is to be towed from
- d. Periodically review the performance standard for the response time of the tow operator. If the operator is found to exceed the standards delineated in this ordinance, the tow operator will be removed from the on-call tow list for two rotations for the first warning, four rotations for the second warning, eight rotations for the third and final warning before being removed as an eligible tower for a period of two years.
- e. immediately suspend any vendor who fails to maintain the required insurance until such violation has been cured to the reasonable satisfaction of the municipal clerk and attorney.
- f. recommend to the governing body to terminate any vendor's license with the municipality for continued violations of their license.

VIII. Duties of the vendor shall include but not be limited to the following:

- a. Acceptance of at least two major credit cards for payment
- b. Maintain a journal of every vehicle towed at the request of the municipality that shall include the following:
 - i. Date & Time of the tow request
 - ii. Time the vehicle arrived at the tow yard and

- iii. Make, model & year of the vehicle
- iv. License Plate
 - v. Date & time vehicle retrieved & the amount paid
 - vi. Who retrieved the vehicle
 - vii. Date, time & who viewed the vehicle
- c. Maintain on the premises a copy of all tow receipts for a period of three years.

IX. HEARINGS

a. DENIAL OF APPLICANT

- i. Any applicant denied a place on the towing list shall be provided with prompt written notice of the denial with an explanation by the Police Chief and/or the Municipal Attorney.
- ii. Within five business days after receipt of the denial, the applicant may
 - 1. cure the reason for the denial and serve adequate proof to the clerk and police chief, or
 - 2. seek a waiver for good cause from the municipality at the open public meeting when the governing body is granting licenses to tow. Any such relief sought by an applicant shall be requested in writing and served on the municipal clerk, chief of police and municipal attorney no less than ten days before the municipality will be acting on the police department's recommendation.

b. SUSPENSION OR REMOVAL

- i. Insurance
 - 1. If the municipality has determined that the vendor has failed to maintain proper insurance coverage as required by this ordinance, the tower shall immediately be removed and unless it was through no fault of the vendor, the vendor shall be exempt from towing again for the municipality for three years.
- ii. Timely Response
 - 1. If the vendor repeatedly fails to timely report to remove a motor vehicle, they shall be suspended from the tow list for one full cycle for the first time in any license period.
 - 2. If the vendor after having been suspended continues to arrive late, they shall be suspended for three full cycles
 - 3. If the vendor after having been suspended twice continues to arrive late, they shall be removed from the list of towers.
- iii. Falsification
 - 1. Any tower that has knowingly provided false and or materially inaccurate information to the municipality regarding towing, the applicant shall be barred from serving as a tower from the municipality for five years.
 - 2. If a tower fails to timely provide notice of a new employee on

- a. Three occasions, the vendor shall be suspended for three cycles.
 - b. Five occasions, the vendor shall be removed from the list
- iv. Improper charges

If a complaint for improper charges is sustained by the Police Department after investigation the governing body, on recommendation of the Police Chief may terminate a tower's license and/or bar the tower from providing such services for a period of 5 years.
- c. DUE PROCESS HEARINGS - With the exception of a violation regarding insurance, upon notice of an impending suspension or removal, the tower shall be entitled to an open public hearing before the governing body. Hearing shall occur after no less than ten days' notice from the request nor more than thirty-one days.

X. POLICE IMPOUNDS

- a. Motor vehicles which are stolen, abandoned, involved in a crime, in violation of Title 39 offenses which require impoundment, involved in a fatal accident or accidents which, in the judgment of police may become fatal, shall be considered police impounds. The Chief of Police shall designate where such police impounds shall be towed.
- b. No motor vehicle which has been impounded pursuant to the laws of this State shall be released by the Municipality unless proof of valid insurance and proof of ownership for that vehicle is presented to the Police Department.
- c. An owner of an impounded vehicle may have their vehicle removed from the storage facility by wrecker only after the registration and license plates have been surrendered to the New Jersey Motor Vehicle Commission or, if not registered in this state, to the Division of Motor Vehicles of the State of registration.
- d. The recovery or salvage of the impounded motor vehicle by, or on behalf of, an insurer, financial institution or other lending entity, shall not require proof of motor vehicle insurance for that vehicle.
- e. An administrative fee shall be charged and paid to the Municipality for a release of any motor vehicle.
- f. The administrative fee will not apply to vehicles which were towed solely as the result of a motor vehicle collision, or if the vehicle was towed as the result of criminal activity and the vehicle and/or owner /driver was the victim.
- g. Tow Operators shall not release from their storage facility any vehicle that was impounded by the Police Department without written authorization from the Police Department which may be via email or fax.
- h. Any Tow Operator found in violation of this section shall have their Tow Operators Permit immediately suspended pending revocation for the remainder of the Tow Operators Permit.
- i. Any subsequent violation of this section after reapplying and reinstatement of the Tow Operators Permit shall result in immediate revocation of the Tow Operators

Permit with an ineligibility to reapply for a Tow Operators Permit for a period of four (4) years.

- j. For any impounded vehicle removed to the Municipality Storage Facility the tow operator shall submit its bill for tow services to the Municipality, which will process and make payment for the same. To secure release of the vehicle after the police impound has been lifted, the vehicle owner must pay to the Municipality the daily storage fee, any administrative fees for vehicle release charged by the Municipality, plus the fee for tow services charged to the Municipality by the Tow Operator.

XI. **REGULATIONS AND PROCEDURES** The Chief of Police shall promulgate such rules, regulations and procedures, not inconsistent with this ordinance, as may be reasonable and necessary to carry out the provisions of this chapter. Copies thereof shall be provided to all permit holders and shall be made available to the public, along with copies of current fee schedules, during business hours

XII. **SEVERABILITY** In the event a court of competent jurisdiction shall find any provision, paragraph, section, subsection, clause or phrase of this ordinance unlawful, unconstitutional or invalid for any reason, such finding shall not affect the validity of the remaining portions.

XIII. **EFFECTIVE DATE**

This ordinance shall take effect immediately upon final passage, adoption and publication according to law.

ATTEST:

Jeanine E. Siek, RMC
Municipal Clerk

Andrew LaBruno, Mayor

Introduced: August 10, 2021

Adopted:

