

**ORDINANCE ENACTING TITLE 5 CHAPTER 1 ARTICLE C SECTION 5-1-30 THROUGH SECTION 5-1-48, LAW-ENFORCEMENT-REQUESTED TOWING OF THE CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA**

Be it ordained by the Council of the City of Harrisonburg, Virginia:

Sec. 5-1-30 - Purpose.

Pursuant to the authority provided in Code of Virginia § 46.2-1217, as amended, The City Council hereby enacts this article to regulate law-enforcement-requested towing. Towing pursuant to the provisions of this article is for law-enforcement-requested towing only and shall not be applicable to towing not at the request of official law-enforcement personnel.

Sec. 5-1-31 - Definitions.

For the purposes of this article, the following words, terms, and phrases shall have the meanings respectively ascribed to them in this section unless the context clearly indicates a different meaning:

Application means an application for law-enforcement-requested towing service in the City of Harrisonburg.

Authorized tow operator means a tow operator which meets the requirements of the policy and has entered into a towing service agreement to provide towing services at the request of law-enforcement personnel.

The City Council means The City of Harrisonburg City Council.

City means City of Harrisonburg.

Emergency means a critical traffic problem; snow storm, ice storm, hurricane, tornado, or other extreme or inclement weather condition; parade or other similar public event; riot or other public insurrection; disaster, whether natural or manmade; or similar event not ordinarily or usually occurring.

Law-enforcement personnel or *law-enforcement agency* means the Chief, the Virginia State Police Superintendent, or any other officer with arresting authority in the county, or their agents.

Law-enforcement requested towing or *law-enforcement towing request* includes all requests made by law-enforcement personnel or law-enforcement agency pursuant to the towing policy, and towing requests made by a law-enforcement officer at the request of the owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator.

Log means a list of vehicles towed at the request of the police department or other law-enforcement personnel, which is maintained by each tower.

Policy means The City of Harrisonburg Police Towing Policy.

Receipt means a clearly legible printed, numerated, and dated receipt that includes, but is not limited to, the business name, address, and telephone number, and is signed by the owner/operator or their agent.

Chief means the Harrisonburg Police Department Chief or his designee.

Chief's office means the Harrisonburg City Chief's Office.

Storage facility means a storage lot, building, or facility used by a tow operator for services pursuant to a towing service agreement that meets all applicable towing policy requirements.

Suspension means temporary removal from the towing list for a violation of the towing policy or breach of the towing service agreement.

Termination means permanent removal from the towing list and rescission of the towing service agreement.

Tow operator means:

- (1) A person, business, or firm engaged in the business of, or offering of, a vehicle towing service, whereby motor vehicles are or may be towed or otherwise moved from one place to another by the use of a vehicle adapted to or designed for that purpose; and/or
- (2) A single towing business owned or operated by an individual, corporation, partnership, or firm having legal or equitable title in said operation at one location within the county for a minimum of six (6) months which consists of an office and an appropriate-sized storage facility as defined in the policy. The office shall have an attendant employed by the towing business on-premises to accept calls, and release vehicles at least between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. All provisions of the Harrisonburg City Law-Enforcement Requested Towing Ordinance shall be met.

Towing board means the Harrisonburg City Advisory Board on Law-Enforcement Towing, which consists of six (6) members: two (2) law-enforcement officers, two (2) towing and recovery operators, and two (2) citizens.

Towing list or *list* means the list maintained by the Harrisonburg City Police Department of those tow operators authorized to respond to the Harrisonburg City Police Department or other law-enforcement personnel's requests for the towing of vehicles.

Towing panel means a panel of the towing board, which hears complaints brought by The City of Harrisonburg Police Department. In the event that a member of the towing panel lodges a complaint against another tow operator, the towing panel member shall be excused from that hearing. The towing panel shall consist of a quorum of the remaining members compiled from the membership of the towing board, excluding the Chief.

Towing policy means the Harrisonburg City Police Department Towing Policy.

Towing service agreement means the agreement between the City Police Department and a tow operator, pursuant to this article and the towing policy.

Vehicle owner means the owner of record or lessee of the motor vehicle or their agent, or other person lawfully acting on their behalf.

Sec. 5-1-32. - Towing policy.

- (a) The towing board is hereby authorized to promulgate policies and procedures for law-enforcement-requested towing services. These policies and procedures, known as the Harrisonburg City Police Department towing policy, establish rules and regulations for the administration of law-enforcement-requested towing services. Such rules and regulations shall be consistent with this article and the laws of the United States and the commonwealth and shall have the force and effect of law.
- (b) The rules and regulations which may be promulgated by the towing board in accordance with subsection (a) above, shall be in effect upon approval by the City Council following a public hearing before the City council. The City council additionally reserves to itself the authority to amend, alter, or repeal any provision of the rules and regulations so promulgated.
- (c) Copies of towing policy shall be available through the Harrisonburg Police Department.

Sec. 5-1-33 - Applications for law-enforcement-requested towing.

Any tow operator desiring to perform law-enforcement-requested towing services shall make application with the Harrisonburg Police Department in conformance with the provisions of the towing policy. Said application shall be accompanied by an application fee in the amount of one hundred dollars (\$100.00). The application fee shall be deposited into the Police Departments account to offset the man hour cost of doing the inspections. After completion of an investigation, the Chief or Designee, in his sole discretion, shall determine whether the applicant meets the requirements of the towing policy. If the Chief or Designee finds the applicant qualified, the tow operator and Chief or Designee shall enter into a towing service agreement.

Sec. 5-1-34. - Insurance.

All authorized towers shall maintain insurance in the amounts specified in the towing policy.

Sec. 5-1-35. - Duties and requirements of authorized tow operators.

Tow operators shall be obligated to perform those duties required under the towing policy. Failure to perform said duties may result in suspension or termination from the towing list.

Sec. 5-1-36 - Equipment and maintenance of towing vehicles.

All authorized tow operators under this article shall maintain vehicles and equipment required pursuant to the towing policy. All vehicles and equipment are subject to an annual inspection

performed by the Chief or Designee which shall be evidenced by a valid sticker. There shall be an annual inspection fee of twenty-five dollars (\$25.00) charged for each vehicle inspected. The annual inspection of the vehicles will occur each January, unless otherwise set by the Chief or Designee.

Sec. 5-1-37. - Storage and security of vehicles by authorized tow operators.

All vehicles towed under this article shall be stored in a secured storage facility as required in the towing policy. All applicable city code provisions and ordinances shall apply to storage facilities.

Sec. 5-1-38. - Responsibilities and records maintained by authorized tow operators.

- (a) The tow operator shall be required to maintain all records required under state law and the towing policy.
- (b) The tow operator shall be reasonably responsible for all vehicle(s) towed and any contents, from the time the vehicle is towed until the vehicle is either released or disposed of in accordance with the towing policy, state laws, and county code and ordinances.
- (c) There shall be an attendant on duty from the hours of 8:00 a.m. - 5:00 p.m., Monday - Friday, except on state holidays, for the purpose of permitting inspections and/or releasing stored vehicles. After hours, the owner or attendant must be available by telephone. The owner or attendant must be available twenty-four (24) hours per day, each day of the year, for the purpose of releasing stored vehicles.
- (d) The tow operator shall be required to adhere to all responsibilities and requirements under the towing policy.

Sec. 5-1-39. - Compensation to authorized tow operators.

Tow operators shall be compensated for their services by the towed vehicle owner. The towing and storage fees charged by the tow operator shall be reasonable in light of those charged by other tow operators in the area for comparable service. There shall be no additional charges for mileage for in city tows. No charges imposed for the storage of vehicles for a period of twenty-four (24) hours or less shall exceed charges imposed for one day of storage.

Sec. 5-1-40. - Towing areas.

At this time the whole City will be one zone. If a time comes to create towing zones a 30 day notice will be given to the tow operators.

Sec. 5-1-41. - Rotation system.

Request for towing in the above-designated areas shall be done on a rotating basis in accordance with the provisions of the towing policy.

Sec. 5-1-42. - Solicitation of business by tow operator.

- (a) No tow operator shall respond to the scene of an accident, emergency, or mechanical breakdown for the purpose of towing vehicles unless specifically called there by law-enforcement personnel or the person involved in the accident, emergency, or mechanical breakdown.
- (b) No tow operator shall respond to the scene of an accident, emergency, or mechanical breakdown for the purpose of soliciting business.
- (c) Violations of this section shall be punishable as a Class 3 misdemeanor.
- (d) Any authorized tow operator violating this section may also be suspended or terminated from the towing list.

Sec. 5-1-43. - Violations of the towing policy.

Violation of any provision of the towing policy may subject the tow operator to suspension from the towing list, including, but not limited to:

- (1) Deliberate failure of a tow operator to respond to calls;
- (2) Securing a towing service agreement by fraud or concealment of a material fact;
- (3) Violation of the towing service agreement;
- (4) Chronic or repeated violations of the towing policy, even if minor in nature; and/or
- (5) A single serious violation of the towing policy, including but not limited to:
 - (a) Running unauthorized calls;
 - (b) Overcharge that is not otherwise prohibited under Code of Virginia § 46.2-118;
 - (c) Alcohol or drug use that is not otherwise prohibited under Code of Virginia § 46.2-118;
 - (d) Tardiness more than five (5) times in a six-month period;
 - (e) Failing to immediately notify the Chief or Designee regarding significant changes to the tow operator or any other changes to information required on the application, including but not limited to: (i) insurance; or (ii) taking on new partner(s), owner(s), agent(s), or corporate officer(s);
 - (f) Fraudulent act with respect to the towing policy that is not otherwise prohibited under Code of Virginia § 46.2-118;

- (g) Employing any person who is a tow truck driver, as defined under Code of Virginia § 46.2-116, who is in violation of any provision of Code of Virginia § 46.2-116;
- (h) Continuing to employ any person who is a tow truck driver, as defined under Code of Virginia § 46.2-116, while that person's registration required under Code of Virginia § 46.2-116 is suspended or revoked pursuant to Code of Virginia § 46.2-117 or any other applicable law;
- (i) An order or judgment entered by a circuit court under Code of Virginia § 46.2-119 that enjoins, or awards restitution, damages, costs, or expenses for, a violation of Code of Virginia §§ 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1;
- (j) Endangering the health and welfare of the public that is not otherwise prohibited under Code of Virginia § 46.2-118; or
- (k) Failure to comply with any provision of the towing policy.

Sec. 5-1-44. - Complaints of violations of the towing policy.

- (a) Any tow operator who believes he/she has been treated unfairly by any law-enforcement personnel may file a complaint against that person. Complaints shall be in writing and directed to the Chief or Designee, executive head of the local office of the Virginia State Police, or other applicable law-enforcement agency.
- (b) Any person who believes that a tow operator has violated or is in violation of the towing policy, the city code, or city ordinance may file a complaint against the tow operator. The complaint shall be in writing and directed to the Chief or Designee. The City Police department shall provide the complainant with a complaint form to be filled out and returned to the Chief or Designee. The complaints shall be investigated by the Chief or Designee.
- (c) After an investigation of the complaint, the Chief or Designee shall notify the complainant of the results of the investigation and any action as a result of the complaint.

Sec. 5-1-45. - Complaints of violations of the Virginia Code.

- (a) Any person who is aggrieved by the actions of a: (i) tow truck driver for an alleged violation of Code of Virginia §§ 46.2-118(A), 46.2-1217, 46.2-1231, or 46.2-1233.1; or (ii) towing and recovery operator for an alleged violation of Code of Virginia §§ 46.2-118(B), 46.2-1217, 46.2-1231, or 46.2-1233.1, may file a complaint with the Division of Consumer Counsel of the Office of the Virginia Attorney General for appropriate action in accordance with Code of Virginia § 46.2-119 and any other applicable law.
- (b) Any order or judgment entered by a circuit court under Code of Virginia § 46.2-119 that enjoins, or awards restitution, damages, costs, or expenses for, a violation of Code of Virginia §§ 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1, shall be considered a violation of the towing policy and may subject the towing and recovery operator to suspension or termination from the towing list. Any such tow truck driver or towing and recovery operator shall be referred to the towing panel for a hearing under the towing policy for the sole purpose of

determining whether the driver or operator should be suspended or terminated from the towing list. In such a case, the towing panel shall not hear or decide whether a violation of the towing policy occurred because the circuit court's order shall be dispositive of whether a violation of the towing policy occurred.

- (c) For purposes of this section only, "consumer," "tow truck driver," and "towing and recovery operator" shall have the meanings ascribed to them under Code of Virginia § 46.2-116.

Sec. 5-1-46. - Suspension or termination of authorized tow operators.

- (a) After the Chief or Designee completes his investigation, he may refer the tow operator to the towing panel for a hearing on the violation of this article or the towing policy.
- (b) The Chief or Designee shall provide the tow operator with written notice of the violation. The Chief or Designee shall also notify the tow operator and the towing panel of the date, time, and location of a hearing on the violation before the towing panel.

Sec. 5-1-47. - Hearing and appeals process.

- (a) In the event that a member of the towing panel lodges a complaint against another tow operator, said towing panel member shall be excused from the hearing.
- (b) The Chief or Designee shall be responsible for presenting the allegations against a tow operator to the towing panel members and may call witnesses and ask questions of any witness.
- (c) The tow operator shall be allowed to present evidence and/or testimony supporting his/her case to the towing panel. If the complainant is not present, the complaint form will be presented to the towing panel as complainant's evidence and/or testimony.
- (d) The owner or manager of the accused tow operator shall be allowed an opportunity to attend the hearing and bring any witness(es) who were directly involved in the incident that is the basis of the charges(s) that the accused tow operator violated the towing policy. The owner or manager may make an opening statement, ask witness(es) questions, and make a closing statement.
 - (1) No attorney(s) shall be allowed to attend this towing panel hearing. However, the city attorney or his designee may attend, but shall not participate in the hearing.
 - (2) No witnesses, except for those being questioned at that time, shall be allowed in the room during the towing panel hearing.
- (e) The towing panel, after hearing the evidence and/or testimony presented, shall render a decision.
 - (1) The Chief or Designee shall not be present during the towing panel's deliberations or voting.

- (2) When a tow operator: (i) employs any person who is a tow truck driver, as defined under Code of Virginia § 46.2-116, who is in violation of any provision of Code of Virginia § 46.2-116; or (ii) continues to employ any person who is a tow truck driver, as defined under Code of Virginia § 46.2-116, while that person's registration required under Code of Virginia § 46.2-116 is suspended or revoked pursuant to Code of Virginia § 46.2-117 or any other applicable law; the towing panel's sole decision in such a case shall be whether the tow operator should be suspended or terminated from the list. The towing panel shall not hear or decide whether a violation of the towing policy occurred because the Virginia Department of Criminal Justice Services decision to suspend or revoke the tow truck driver's registration under Code of Virginia § 46.2-117 shall be dispositive of whether a violation of the towing policy occurred.
- (f) The chairman presiding over the towing panel hearing shall notify the accused tow operator in writing of the towing panel's decision. A copy of the decision shall be sent to the Chief or Designee and to the local office of the Virginia State Police, if applicable.
- (g) When a tow operator is aggrieved by the decision of the towing panel, he/she may, within ten (10) days of the notification of the decision, appeal the decision to the city council. The appeal shall be submitted in writing to the Chief or Designee and shall state the reason(s) for the appeal, including any supporting documentation. After the Chief or Designee receives a timely appeal, he shall deliver a complete copy of the towing panel hearing record to the city council.
- (h) Upon an appeal of a towing panel's decision, the city council, or a committee appointed or designed by the city council, shall consider whether the decision of the towing panel, based on the record before the towing panel, was based on a reasonable application of the prescribed standards. The hearing by the city council or the committee shall be a de novo hearing. When the city council, or the committee, determines that the towing panel's decision was reasonable, the city council, or the committee shall affirm the decision. When the city council, or the committee, determines that the towing panel's decision was unreasonable, the city council, or the committee, may modify and affirm or reverse the decision.
- (i) The city council, or the committee, shall act upon any appeal filed under this section within thirty (30) days, unless there is no city council or committee meeting scheduled, in which case the city council or committee shall act at its next regular meeting. Failure of the city council or committee, to act within this time shall be deemed approval of the towing panel's decision.
- (j) The decision of the city council or the committee, in an appeal under this section, shall be final. In the event, the city council or the committee, after hearing the appeal, refers the matter back to the towing panel, the decision of the towing panel shall be final.

Sec. 5-1-48. - Amendments to the towing policy.

- (a) The towing board is hereby authorized to promulgate revisions to the towing policy.
- (b) All revisions proposed by the city council shall be discussed with the towing board and their input will be considered in each proposed revision.
- (c) Revisions shall be in effect from the date on which they are adopted by the city council.
- (d) Tow operators on the towing list shall be given written notification of any changes to the towing policy at least ten (10) days prior to the revision being adopted.

This ordinance shall be effective from the ____ day of _____, 2020. Adopted and approved
this ____ day of _____, 2020.

MAYOR

ATTESTE:

CITY CLERK