

ORDINANCE NO. 2024-30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 90, ARTICLE 4, WRECKERS, OF THE SAN MARCOS CITY CODE FOR THE PURPOSES OF MODIFYING SIGNAGE REQUIREMENTS, PLACING RESPONSIBILITY FOR ADMINISTERING THE WRECKER ROTATION SYSTEM WITH THE CITY MARSHAL, IMPROVING SAFETY EQUIPMENT REQUIREMENTS, INCREASING THE RESPONSE TIME ALLOWED FOR WRECKERS, IMPROVING IMPOUND AND INVENTORY REQUIREMENTS, EXPANDING THE LOCATIONS FOR STORAGE FACILITIES TO INCLUDE THE EXTRATERRITORIAL JURISDICTION, INCREASING MAXIMUM FEES FOR ALL TYPES OF TOWS AND RELATED SERVICES, CREATING A DUTY FOR STORAGE FACILITIES TO REPORT VEHICLES RECEIVED TO THE POLICE DEPARTMENT AND PROVIDING NEW FINES AND PENALTIES FOR VIOLATIONS; INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. In 2022, the Parking Enforcement Division was removed from the supervision of the San Marcos Police Department and relocated under the City Marshal's Department.
2. There is a need to formally place the responsibility of Wrecker rotation system administration under the City Marshal.
3. There is a need to impose penalties and possibly remove wreckers from rotation for violations of the ordinance and to standardize suspensions and fine amounts.
4. Pursuant to a tow fee study performed by Parking Enforcement Staff, there is a need to increase fees for all types of tows and related services due to inflation, a lack of medium duty wreckers, and the cost of tows in similar and neighboring cities.
5. There is a need to require vehicle storage facilities to report the receipt of a vehicle that is towed from private property and punish those facilities that fail to report.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 90, Article 4, Wreckers, of the San Marcos City Code is hereby amended to read in its entirety as follows. Additions are indicated by underlining. Deletions are indicated by strikethroughs.

ARTICLE 4. WRECKERS

DIVISION 1. GENERALLY

Sec. 90.221. Findings and purposes.

- (a) The city council makes the following findings:
 - (1) The city council wishes to update and clarify the city's regulations pertaining to the rotation system for the performance of police-authorized tows.
 - (2) Fees charged by wrecker services for non-consent tows do not have the benefit of market forces, arms-length negotiation, and competition, and therefore the city should limit the amounts of fees that can be charged for non-consent tows, and members of the public should be notified of the amounts of these fees and of city limitations on the fees.
- (b) The purposes of this article are as follows:
 - (1) To update and clarify regulations related to the city's rotation system for calling wreckers for police-authorized tows; and
 - (2) To limit the amounts of fees charged for non-consent tows.

Sec. 90.222. Scope.

- (a) The limitations on rates in division 3 of this article apply only to non-consent tows that originate in the city. They do not apply to consent tows, and they do not apply to consent tows or non-consent tows that originate outside the city.
- (b) The regulations pertaining to the ~~police-department~~ City of San Marcos rotation system in division 4 of this article apply to wreckers that perform police-authorized tows in the city.
- (c) The regulations pertaining to vehicle storage facilities in division 4 of this article apply to vehicle storage facilities that accept vehicles towed as police-authorized tows for storage.

Sec. 90.223. Definitions.

In this article:

Accident means a situation in which damage has occurred to a vehicle rendering it unsafe to operate or incapable of operation.

Category A wrecker means or refers to a wrecker having a rated towing capacity of at least one ton and less than four tons.

Category B wrecker means or refers to a wrecker having a rated towing capacity of at least four tons.

Chief of Police means the Chief of Police of the city.

City Marshal means the City Marshal of the city.

Consent tow means the towing of a motor vehicle with the consent of the vehicle owner or lienholder.

Motor vehicle means a self-propelled vehicle.

Non-consent tow means the towing of a motor vehicle without the consent of the vehicle owner.

Parking facility has the meaning given that term in the Texas Occupations Code, Chapter 2308, as amended.

Parking facility owner has the meaning given that term in the Texas Occupations Code, Chapter 2308, as amended.

Participating storage facility means a private vehicle storage facility that accepts vehicles towed as police-authorized tows.

Police-authorized tow means a non-consent tow of a motor vehicle from a police scene with the authorization of a police officer.

Police scene means:

- (1) A place at which an accident has occurred that is subject to investigation by a police officer;
- (2) A place at which a police officer has discovered a stolen vehicle;
- (3) A place at which a vehicle has been abandoned in a roadway;
- (4) A place where a custodial arrest by a police officer has taken place; or
- (5) Any other place at which a vehicle is subject to removal or impoundment by a police officer pursuant to law.

Principal person, with respect to a wrecker service registration, means

- (1) The individual who owns the wrecker service, if the owner is an individual;
- (2) Each partner owning an interest in the wrecker service, if the owner is a partnership;
- (3) Each officer of the corporation that owns the wrecker service, if the owner is a corporation; and
- (4) The manager of the wrecker service.

Rotation system means the system established under division 2 of this article that provides for the summoning of wreckers to perform police-authorized tows.

Rotation wrecker service means a wrecker service that holds a current valid registration for placement in the rotation system.

Storage facility means a private vehicle storage facility that accepts vehicles towed as non-consent tows originating in the city limits.

Storage facility regulations means the state Vehicle Storage Facility Act, 43 T.A.C. Section 18.80 et seq., as amended.

Tow means the use of a wrecker to transport another vehicle, whether by pulling, carrying, pushing, or any other method.

Vehicle means a device that can be used to transport or draw persons or property on a highway.

Vehicle owner or *owner of the vehicle* means the owner of a vehicle or a person who reasonably appears to have authority to operate the vehicle.

Vehicle Storage Facility Act means Texas Occupations Code Chapter 2303, as amended.

Wrecker means any motor vehicle used for the purpose of towing, carrying, pushing or otherwise transporting any other vehicle.

Wrecker driver means a person who operates a wrecker.

Sec. 90.224. Penalty.

A person who violates any provision of this article commits a misdemeanor and shall be punished upon conviction by a fine of not less than \$200.00 nor more than \$500.00, unless a different fine is otherwise specifically provided for a violation under this article.

Sec. 90.225. Prohibited interests in wreckers and wrecker services.

It is unlawful for a city officer or employee to have an ownership interest in any participating wrecker service or participating storage facility.

Sec. 90.226. Vehicles not to be towed unless signs posted.

- (a) It is unlawful for a person who owns or controls a parking facility to cause or permit a non-consent tow of a vehicle from the parking facility if signs prohibiting the parking of unauthorized vehicles are not properly posted at the parking facility in accordance with the Texas Occupations Code, Chapter 2308, as amended, and this section.
- (b) In addition to the requirements for signs under the Texas Occupations Code, Chapter 2308, as amended, to authorize non-consent tows, the signs must:
 - ~~(1) — Include a bold and clear statement of the amount of the fees for the towing of vehicles from the property immediately followed by the statement "PLUS STORAGE FEES";~~
 - (12) Include a bold and clear statement of the hours during which non-consent tows are performed, or if they are performed at all hours, the statement "TOWING ENFORCED AT ALL TIMES, DAY AND NIGHT"; and
 - (23) Be illuminated by lighting attached to the sign or by other lighting sufficient to make the sign readable if non-consent tows are performed between the hours of sunset and sunrise;

~~(c) — An additional sign meeting the specifications attached to this ordinance as Exhibit "A" must be posted at each vehicular exit from the parking facility to an adjoining street or alley.~~

~~(c)~~ It is a defense to prosecution under this section that the parking facility owner has given notice in a manner other than by posted signs, in accordance with the Texas Occupations Code, Chapter 2308, as amended, to the owner or operator of a vehicle that the vehicle will be towed if it is not removed from the parking facility.

~~(d)~~ It is a defense to prosecution under this section that the vehicle being towed:

- (1) Is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
- (2) Prevents a vehicle from exiting a parking space at the facility;
- (3) Is in or obstructs a marked fire lane;
- (4) Is in a space designated for vehicles transporting disabled persons, and does not display a special license plate or placard for a vehicle that transports a disabled person; or
- (5) Is in or obstructing a part of a driveway used for entering or existing the facility.

Sec. 90.227 – 90.239. Reserved.

DIVISION 2. POLICE DEPARTMENT CITY OF SAN MARCOS ROTATION SYSTEM

Sec. 90.240. Applicability.

This division applies to wrecker services that perform police-authorized tows, towing activities at police scenes, and storage facilities to which vehicles towed as police-authorized tows are taken.

(a) It is unlawful for a person who owns or controls a parking facility to cause or permit a non-consent tow of a vehicle from the parking facility if signs prohibiting the parking of unauthorized vehicles are not properly posted at the parking facility in accordance with the Texas Occupations Code, Chapter 2308, as amended, and this section.

(b) In addition to the requirements for signs under the Texas Occupations Code, Chapter 2308, as amended, to authorize non-consent tows, the signs must:

~~(1) — Include a bold and clear statement of the amount of the fees for the towing of vehicles from the property immediately followed by the statement "PLUS STORAGE FEES";~~

~~(1)~~ Include a bold and clear statement of the hours during which non-consent tows are performed, or if they are performed at all hours, the statement "TOWING ENFORCED AT ALL TIMES, DAY AND NIGHT"; and

- (23) Be illuminated by lighting attached to the sign or by other lighting sufficient to make the sign readable ~~by lighting attached to the sign or by other lighting equipment sufficient to make the sign readable~~ if non-consent tows are performed between the hours of sunset and sunrise;
- ~~(e) — An additional sign meeting the specifications attached to this ordinance as Exhibit "A" must be posted at each vehicular exit from the parking facility to an adjoining street or alley.~~
- (c) It is a defense to prosecution under this section that the parking facility owner has given notice in a manner other than by posted signs, in accordance with the Texas Occupations Code, Chapter 2308, as amended, to the owner or operator of a vehicle that the vehicle will be towed if it is not removed from the parking facility.
- (d) It is a defense to prosecution under this section that the vehicle being towed:
- (1) Is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
 - (2) Prevents a vehicle from exiting a parking space at the facility;
 - (3) Is in or obstructs a marked fire lane;
 - (4) Is in a space designated for vehicles transporting disabled persons, and does not display a special license plate or placard for a vehicle that transports a disabled person; or
 - (5) Is in or obstructing a part of a driveway used for entering or existing the facility.

Sec. 90.241. Rotation system registration.

- (a) Each wrecker service that meets the qualifications under subsection (b) may elect to participate in the ~~police department~~ City of San Marcos rotation system for performing police-authorized tows by submitting a fully completed rotation system registration form to the ~~Chief of Police~~ City Marshal. The registration form must contain, at a minimum, all of the following information regarding the wrecker service:
- (1) The business name, address, telephone number and fax number.
 - (2) The name, address, and phone number of each principal person of the service.
 - (3) The normal business hours.
 - (4) The name and telephone number of the person designated by the service for taking after-hours calls.
 - (5) The name of the operator and the address and phone number of the storage facility to which the service will tow vehicles.

The registration form must be accompanied by a current certificate of insurance for the wrecker service. The certificate must list the city as an

additional insured and must provide that the insurance carrier will give notice to the ~~police department~~ marshal's department at least 30 days prior to any cancellation or expiration of the coverage.

- (b) To be eligible for registration on the ~~police department~~ City of San Marcos rotation system, a wrecker service must meet all of the following requirements:
 - (1) The wrecker service must have at least two properly operating wreckers available for service at all times that are fully equipped in accordance with section 90.243.
 - (2) The wrecker service must comply at all times with the insurance requirements in section 90.244.
- (c) There is no fee for participating in the ~~police department~~ City of San Marcos rotation system registration.
- (d) Participation in the ~~police department~~ City of San Marcos rotation system by a wrecker service is a privilege and does not constitute any form of property right of a wrecker service.
- (e) Two separate rotation lists and activity logs will be maintained by the police department. The first list will consist of Category A rotation wrecker services having at least one Category A wrecker. The second list will consist of Category B rotation wrecker services having at least one Category B wrecker.
- (f) A new rotation wrecker service registration may be submitted any time during the year. A registration is valid only for the calendar year for which it is issued. Each rotation wrecker service registration must be renewed each year by submission of a new registration form and supporting information on or after December 1st, and no later than December 31st, for the following year.

Sec. 90.242. Transfer of registration.

A rotation system registration is personal to the registrant and may not be transferred. A person who succeeds to the ownership or operation of a wrecker service, and is not identified on a current wrecker service registration as a principal person of the service, must submit a new registration to the ~~chief of police~~ City Marshal.

Sec. 90.243. Wrecker equipment.

- (a) *Requirements for all wreckers.*
 - (1) It is unlawful for a driver to perform a police-authorized tow with a wrecker unless the towing device is mounted on the bed of a motor vehicle designed for use as a wrecker. The use of a vehicle that is not self-propelled but must be connected to a motor vehicle is prohibited for police-authorized tows.

- (2) It is unlawful for a driver to perform a police-authorized tow with a wrecker if the wrecker does not have all of the following in good working order:
- a. One ten-pound or two five-pound fire extinguishers that are properly filled and located so that they are readily accessible for use. The fire extinguishers must meet the requirements of the National Fire Protection Association, NFPA 10, for a 10BC fire extinguisher and shall be so labeled by a national testing laboratory. The fire extinguishers shall be inspected annually by a licensed inspector and must bear a current and valid inspection certificate.
 - b. Three portable red emergency reflectors.
 - c. One broom of a type designed for pushing with an 18-inch head, and a handle at least 36 inches long.
 - d. No less than five gallons of dry sand or other absorbent which is at least as effective as sand in absorbing liquid.
 - e. A box or bucket to carry glass and debris.
 - f. One flat-edged shovel at least nine inches wide, with a handle at least 36 inches long.
 - g. One wrecking bar at least 36 inches long with a wedge head.
 - h. Towing dollies in working condition, for Category A wreckers that are not equipped with a movable bed for winching a vehicle onto the bed for transporting vehicles.
 - i. Rope or wire suitable for securing doors, hoods, trunks, etc.
 - j. One working spotlight or flashlight. Cell phone flashlights are not acceptable substitutes.
 - k. Outside rearview mirrors on both sides of the truck.
 - l. One set of operating tow lights for the towed vehicle.
 - m. A tow sling or hydraulic lift sufficient to prevent the swinging of the towed vehicle.
 - n. Steel safety chains with at least three-eighths inch links for Category A wreckers and at least one-half inch links for Category B wreckers.
 - o. Emergency flashing overhead warning lights that are in good working order, with lenses free of oxidation, that are clearly visible during daylight hours.
- (3) Each wrecker must be labeled on both sides with the wrecker service's name, address, and phone number. All numbers and lettering shall be permanently affixed and at least two inches in height.
- (4) Each wrecker must be equipped with a radio or telephone capable of clear communications with the wrecker service's dispatcher.
- (5) At all times when a wrecker is towing a vehicle, the wrecker driver must ensure that the towed vehicle has functioning turn signals, brake, and clearance lights visible from the rear of the vehicle and actuated by the wrecker driver. The lights may be those of the towed vehicle, or temporary lights affixed to the towed vehicle.
- (6) Wrecker drivers must wear high visibility shirt or traffic vest, while working along a highway.

(67) Each wrecker is subject to inspection at any time by any officer of the police department or marshal's department.

(b) *Additional equipment for Category B wreckers.*

It is unlawful for a driver to perform a police-authorized tow with a Category B wrecker if the wrecker does not have all of the equipment listed in section 90.243(a) and, in addition, all of the following equipment, in good working order:

- (1) A winch capable of lifting at least 30,000 pounds. If one winch line is used it must be at least three-fourths inch in diameter; if two winch lines are used each must be at least five-eighths inch in diameter.
- (2) An A-frame capable of being used for lifting vehicles, trucks, trailers or equipment, air brakes and air lines.
- (3) A tow bar sufficient to prevent the swinging of a vehicle being towed by the wrecker.

Sec. 90.244. Insurance.

(a) A wrecker service, as a condition of participating in the rotation system, must maintain in full force and effect all insurance coverage required by this section. Registrants must file a current, valid certificate of insurance with the chief of police City Marshal no later than December 31st of each year. The certificate must certify the type and amount of insurance coverage, and must state that the issuer will provide at least 30 days advance notice to the chief of police City Marshal of any cancellation or material change in the coverage.

(b) The insurance coverage must be in at least the following amounts:

- (1) For Category A wreckers: \$500,000.00.
- (2) For Category B wreckers: \$500,000.00.

(c) Each rotation wrecker service must have tow truck cargo, on-hook, or similar insurance covering damage to towed vehicles in at least the following amounts:

- (1) For Category A wreckers: \$50,000 per occurrence.
- (2) For Category B wreckers: \$50,000 per occurrence.

(d) Each rotation wrecker service must be insured to meet the requirements of all other applicable statutes in addition to meeting the insurance requirements set forth in this article.

(e) A rotation wrecker service registration will be automatically suspended upon cancellation or expiration of any insurance required by this section, and will not be reinstated until the registrant provides an insurance certificate to the chief of police City Marshal verifying that all required coverages are once again in full force and effect.

- (f) All required insurance certificates must name the city as an additional insured.
- (g) Rotation wrecker services must ensure speedy and appropriate adjustment of all claims made under required insurance coverages.
- (h) Each rotation wrecker service must hold the city harmless from all claims, actions and lawsuits for personal injury or property damage arising in connection with services provided by the wrecker service. Each rotation wrecker service is solely responsible for all vehicles towed by the service's wreckers, and for all property inside the vehicles.

Sec. 90.245. Availability of rotation wrecker services.

- (a) Each rotation wrecker service must be available to respond to police department calls on a 24-hour per day basis and must respond to any location within the city within 30 minutes after being notified by the police department.
- (b) The ~~chief of police~~ City Marshal is authorized to promulgate, implement and enforce policies for summoning wreckers from rotation wrecker services on a rotating basis for police-authorized tows.

Sec. 90.246. Suspension from rotation system.

- (a) The ~~chief of police~~ City Marshal may suspend a rotation wrecker service from the rotation system for any violation of this article or any policy adopted by the Chief of Police or City Marshal under authority of this article, or for any criminal offense committed by the service or by any driver, employee or agent of the service, in the course of providing services under this article, whether or not the services are being performed as part of a rotation system call. The decision of the ~~chief of police~~ City Marshal on a suspension is final.
- (b) If a rotation wrecker service fails to pay any city ad valorem or sales taxes, or any fines, fees, or other amounts due the city in a timely manner, the ~~chief of police~~ City Marshal will suspend the wrecker service from the rotation system until the taxes are paid.
- (c) The term of any suspension not specifically provided for in the violation and penalty matrix for this article shall be for a period determined by the ~~chief of police~~ City Marshal not to exceed 90 days.
- (d) The ~~chief of police~~ Parking Coordinator will notify a rotation wrecker service of suspension from the rotation system either by confirmed fax, email, or phone call ~~or and~~ by certified mail, return receipted requested. The suspension becomes effective upon receipt by the service notification of the service by fax, email, or phone call.

Sec. 90.247. Obedience to police and fire fighters at police scenes; no smoking at accident scenes.

- (a) All wrecker drivers at a police scene must obey all orders given to them by any police officer or fire fighter at the scene and must not interfere with any police officer or fire fighter at the scene in the performance of the officer's duty.
- (b) It is unlawful for any person to ignite a match, lighter or any other flammable object, or to possess a lighted cigarette, cigar, pipe or other burning material, within a distance of 50 feet from any vehicle involved in an accident.

Sec. 90.248. Towing from public property.

It is unlawful for a driver to perform a non-consent tow of a motor vehicle from a public street, alley, road, right-of-way, or park unless the tow is a police-authorized tow or is directed by a peace officer.

Sec. 90.249. Towing of vehicles at police scene.

- (a) It is unlawful for a wrecker driver to attach to or tow any vehicle from a police scene unless a police officer at the scene authorizes the driver to attach to or tow the vehicle. The fact that no police officer is present at the scene when a wrecker arrives, or that a vehicle owner requests that a vehicle be towed at the scene when no police officer is present, does not constitute an exception to this requirement. A vehicle owner who wishes for his or her vehicle to be towed from a police scene must notify the police department and await the arrival of a police officer.
- (b) In the event a vehicle owner is unable to give permission to a wrecker to remove the owner's vehicle from a police scene, a police officer will give any necessary orders to remove the vehicle. Police officers are authorized to order the moving of any vehicle to clear an area for traffic or other purposes.
- (c) A wrecker driver who tows a vehicle from a police scene must remove and properly dispose of any debris, parts, fluids and glass from the scene. In the event two or more wreckers tow vehicles from the scene, all of the wrecker drivers are responsible for removing and disposing of the debris, parts, fluids and glass. Where any fluid spill is in excess of ten gallons, or the fluid spilled is not required for the normal operation of the vehicle, and an on-duty police officer or fire fighter is not present at the spill area, the wrecker driver must notify the fire department.
- (d) A police officer at a police scene will have authority to summon a Category B wrecker when the equipment is required in the officer's opinion. Unless a police officer summons a Category B wrecker, the wrecker service may not charge any amounts for the tow that exceed the amounts that may be charged for a tow by a Category A wrecker.

Sec. 90.250. ~~Wrecker ticket~~ Vehicle Impound and Inventory for police-authorized tow; destination for tows.

- (a) It is unlawful for a driver to perform a police-authorized tow without obtaining a completed ~~wrecker ticket~~ vehicle impound and inventory form, towed vehicle receipt issued by the police officer, parking technician, or Deputy Marshal who authorizes the tow, or the tow is to be reported to the TxDot CRIS crash reporting system.
- (b) The driver performing a police-authorized tow is responsible for the towed vehicle at all times until the vehicle has been accepted by the storage facility to which it is towed or delivered to another authorized destination.
- (c) Unless a wrecker driver is authorized by a police officer to deliver a towed vehicle to another destination, the driver must deliver the vehicle to a participating storage facility and leave the vehicle inside the fenced area of the storage facility.

Sec. 90.251. Soliciting wrecker business at police scene prohibited.

It is unlawful for any wrecker service owner, driver, employee or agent to solicit business in any manner at or near a police scene without having been requested to report to the scene by a police dispatcher.

Sec. 90.252. Complaints against wrecker services on rotation system.

- (a) A rotation wrecker service must respond to each written complaint received by the service or the ~~chief of police~~ City Marshal related to a police-authorized tow, regarding damage to any vehicle towed or impounded by the wrecker service as a police-authorized tow. The response must be in writing to the person complaining, with a copy to the ~~chief of police~~ City Marshal, and must be sent within ten (10) days of receipt of the complaint.
- (b) If a complaint pertains to damages allegedly caused to a vehicle in the course of a police-authorized tow, the ~~chief of police~~ City Marshal will determine whether the rotation wrecker service involved should pay the damages as a condition of continuing on the rotation system. If the chief determines that damages should be paid, the service must either:
 - (1) Pay the damages within 15 days of the ~~police chief's~~ City Marshal's decision, or
 - (2) File a claim with the service's insurance company within three business days after being notified of the City Marshal's decision, with payment to be made within 45 calendar days after the City Marshal's decision, or the service will be automatically suspended from the rotation system until the payment is made.
- (c) A rotation wrecker service or storage facility must respond to each written complaint received by the service or facility, or by the ~~chief of police~~ City Marshal, related to excessive charges for any police-authorized tow, non-consent tow, drop fee, show up fee or any other act or omission that ~~the~~

~~chief of police~~ City Marshal or designee deems to be an alleged violation of any provision of chapter 90, article 4 of the San Marcos City Code. The response must be in writing to the person complaining, with a copy to the ~~chief of police~~ City Marshal, and must be sent within ten days of receipt of the complaint.

- (d) The ~~chief of police~~ City Marshal will determine the propriety of the charges and shall also determine if there is probable cause to charge the rotation wrecker service or storage facility with a violation of any provision of chapter 90, article 4 of the San Marcos City Code.
- (e) The ~~chief of police~~ City Marshal may suspend a rotation wrecker service or participating storage facility for a period of up to 90 days upon the ~~police~~ chief's City Marshal's determination that the service or facility violated any provision of chapter 90, article 4 of the San Marcos City Code.

Sec. 90.253. Records.

- (a) Each rotation wrecker service must maintain records of services provided under this article for at least one year. The service must make the records available for inspection upon request by the Chief of Police or City Marshal.
- (b) Police department communications personnel will maintain an activity log of calls made on the rotation system for a period of at least one year.

Secs. 90.254—90.269. Reserved.

DIVISION 3. PARTICIPATING STORAGE FACILITIES

Sec. 90.270. Registration required for participating storage facilities.

- (a) It is unlawful for a wrecker driver who performs a police-authorized tow to tow the vehicle to any location other than a participating storage facility, unless a police officer or Deputy Marshal directs the driver to tow the vehicle to a different location or authorizes the driver to tow the vehicle to a location directed by the vehicle owner.
- (b) The operator of a private vehicle storage facility must register with the ~~chief of police~~ City Marshal to become a participating storage facility and accept vehicles towed as police-authorized tows. To register, an operator must submit a fully completed registration form to the ~~chief of police~~ City Marshal. The registration form must contain, at a minimum, all of the following information regarding the operator and the storage facility:
 - (1) The business name, address, telephone number and fax number.
 - (2) The normal business hours.
 - (3) The name and telephone number of the person designated by the operator for taking after-hours calls.
- (c) The registration form must be accompanied by all of the following:

- (1) A current certificate of insurance for the operator, and a copy of the operator's current valid license under the Vehicle Storage Facility Act. The insurance certificate must list the city as an additional insured and must provide that the insurance carrier will give notice to the police department at least 30 days prior to any cancellation or expiration of the coverage.
- (2) A list of employees of the storage facility that have contact with the public.
- (d) A registration under this section is valid as long as the registration information for the operator does not change, and the operator otherwise complies with this article.
- (e) It is a violation of this article for a person to violate any provision of the Vehicle Storage Facility Act or state regulations adopted under that Act in connection with a police-authorized tow.
- (f) The police department may allow the use of a single registration form for a wrecker service that registers as a rotation wrecker service under section 90.241, and also registers as a participating storage facility under this section.
- (g) The ~~chief of police~~ City Marshal may remove a storage facility from the list of participating storage facilities for any violation of this article or any policy adopted by the Chief of Police or City Marshal under authority of this article, or for any criminal offense committed by the service or by any officer, employee or agent of the storage facility, in the course of providing services under this article, whether or not the services are being performed as part of a rotation system call. The decision of the ~~chief of police~~ City Marshal on a removal is final.

Sec. 90.271. Storage facility insurance.

- (a) Each participating storage facility must maintain liability insurance coverage for the storage facility in full force and effect in accordance with regulations issued under the Vehicle Storage Facility Act. The coverage must name the city as an additional insured.
- (b) The operator of the participating storage facility must provide a current certificate of insurance to the ~~chief of police~~ City Marshal no later than December 31st of each year. The certificate must provide that the insurance carrier will give notice to the ~~police~~ City Marshal's department at least 30 days prior to any cancellation or expiration of the coverage.

Sec. 90.272. Business name; facility requirements.

Each participating storage facility must comply with all of the following requirements:

- (1) The facility must be completely enclosed by a fence at least six feet in height. The fence must have a gate that is locked at all times the facility is not open for business. The fence must be continuously maintained in good condition.

- (2) The all-weather surface, illumination, and signage requirements in the Storage Facility Regulations, including the business name and phone number for the facility.
- (3) The facility must have an operating telephone. If the number of the telephone located at the storage facility is changed, the facility operator must give written notice of the change to the ~~chief of police~~ City Marshal prior to the date the use of the new number begins.
- (4) The facility must be located within the city or extraterritorial jurisdiction limits.

Sec. 90.273. Storage of vehicles in fenced area; removal of vehicle parts.

- (a) It is unlawful for a participating storage facility operator to store any vehicle towed as a police-authorized tow outside of the fenced area of the storage facility.
- (b) It is unlawful for a participating storage facility operator to remove, or to cause or permit the removal of, parts from any vehicle being stored at the storage facility without the consent of the vehicle owner. The operator shall not dismantle or demolish a vehicle unless the operator has a certificate of title, certificate of authority to demolish, a police auction sales receipt or a transfer document issued by the state for the vehicle being demolished.

Sec. 90.274. Inspection by police.

A participating storage facility operator must make all vehicles and vehicle parts located at the facility accessible for inspection by any police officer or Deputy Marshal of the city at all times.

Sec. 90.275. Right to inspect wrecker ticket.

A person who is reclaiming a vehicle from a participating storage facility is entitled to inspect the wrecker ticket for the vehicle prior to paying any fees or charges.

Sec. 90.276. Releases and waivers prohibited.

is unlawful for a participating storage facility operator, or an employee or agent of a participating storage facility operator, to ask or require a person reclaiming a vehicle that was towed as a police-authorized tow to sign a statement or form containing any form of release of the operator from liability, or waiver of rights against the operator, prior to the release of the vehicle. A participating storage facility operator may require a person claiming a vehicle to sign a statement or form acknowledging that the person has reclaimed the vehicle. It

Sec. 90.277. Duty to provide attendant.

- (a) The operator of a participating storage facility must make impounded vehicles available for release 24 hours a day within one hour's notice. The

operator must have a publicly listed telephone number which is answered 24 hours a day by the operator or an employee or agent of the operator.

- (b) The use by a participating storage facility operator of an answering machine is prohibited. The use of call forwarding is permitted only if the operator or the operator's employee or agent is on-call to allow the reclaiming of vehicles.
- (c) An operator of a participating storage facility that accepts vehicles from police-authorized tows must make the facility available to accept vehicles from police-authorized tows 24 hours a day and must make vehicles available for release 24 hours a day with one hour's notice.

Sec. 90.278. Compliance with state vehicle storage facility requirements.

Each operator of a participating storage facility must comply with the Vehicle Storage Facility Act and the Storage Facility Regulations with respect to all of the following:

- (1) Providing notices to vehicle owners and lienholders.
- (2) Maintaining documentation and records; all required documentation and records for a vehicle towed as police-authorized tows are to be made to the Chief of Police, City Marshal, Deputy Marshal or any police officer during the normal business hours of the facility.
- (3) Providing access to stored vehicles.
- (4) Securing and storage of vehicles.
- (5) Release and transfer of vehicles.
- (6) Disposal of vehicles.
- (7) Limitations on the amounts of fees.

Sec. 90.279. Fees; forms of payment.

- (a) It is unlawful for an operator of a participating storage facility to charge any fee that is prohibited or not authorized by, or which exceeds a maximum fee set under, the ~~Vehicle~~ Vehicle Storage Facility Act or the Storage Facility Regulations, in connection with the storage of a vehicle towed as a police-authorized tow to the facility.
- (b) An operator of a participating storage facility must accept all of the following forms of payment for vehicle storage charges for a vehicle towed as a police-authorized tow:
 - (1) Cash.
 - (2) One party personal check.
 - (3) Money order or traveler's check.
 - (4) Credit card.

- (c) It is unlawful for a person who makes payment for vehicle storage charges for a vehicle towed as a police-authorized tow by personal check or credit card to stop payment on the check or rescind a credit card charge.

Sec. 90.280. Invoices.

- (a) A vehicle storage facility must provide each vehicle owner who reclaims a towed vehicle with an invoice in accordance with this section at the time a towed vehicle is reclaimed.
- (b) Each invoice must include the vehicle storage facility name, business address and phone number, facility's state vehicle storage facility number, the date and time the vehicle was impounded, the date and time the vehicle was reclaimed, and an itemized statement of the charges. Each invoice must have all of the following information printed on the front or back of the invoice, or printed on a separate sheet that is physically attached to the invoice:
 - (1) A schedule listing the maximum vehicle storage fees set by the state.
 - (2) The following statement, in at least 10-point type:

San Marcos City Ordinance limits, but does not set, the amounts that can be charged for wrecker services, and requires wrecker services and vehicle storage facilities to accept cash, one-party personal checks, money orders, traveler's checks and credit cards for payment of fees. The ordinance also prohibits a person who pays with a check or credit card from stopping or canceling the payment. Persons who wish to contest the propriety of a tow or to contest charges claimed to be excessive may request a hearing at a justice court. Persons who wish to contest charges on police-authorized tows claimed to be excessive may file a complaint with the San Marcos ~~Chief of Police~~ City Marshal.
- (c) If a single invoice is used for wrecker service charges and vehicle storage facility charges, a combined schedule of the maximum wrecker service and vehicle storage fees may be used on the invoice, together with the statement in (b)(2).

Secs. 90.281—90.288. Reserved.

DIVISION 4. NON-CONSENT TOWING REGULATIONS AND RATE LIMITATIONS

Sec. 90.289. Non-consent towing registration required; minimum requirements; suspension.

- (a) Effective on January 2, 2009, it shall be unlawful for a wrecker service to perform non-consent towing of vehicles from private property in the City of San Marcos without having a current and valid non-consent towing registration on file with the San Marcos ~~Police~~ City Marshal's Department.

Registration is not required for non-consent towing of a vehicle during the process of repossession as authorized by a lease or financing agreement.

- (b) In order to obtain and maintain registration to perform non-consent towing, a wrecker service must meet the insurance requirements and other minimum requirements in section 90.244 of the San Marcos City Code for Category A or Category B wreckers, as applicable, and must provide proof of arrangements made to tow vehicles only to a vehicle storage facility located within the city limits of San Marcos.
- (c) The ~~chief of police~~ City Marshal is authorized to suspend the registration of a wrecker service to perform non-consent towing for a period of up to 90 days for violation of any provision of chapter 90, article 4 of the San Marcos City Code including but not limited to charging a fee that is not authorized by section 90.290 or exceeds the maximum fee set forth in section 90.291.

Sec. 90.290. Towing charges limited; summoning of Category B wrecker; forms of payment.

- (a) It is unlawful for a wrecker service to charge any amount for a non-consent tow that exceeds the maximum fee amounts set in section 90.291. This limitation on charges applies whether a vehicle is towed from public or private property. A wrecker service is expressly authorized to charge any amount for a non-consent tow less than the maximum fee amounts set by the city council.
- (b) If the owner of a vehicle undergoing a non-consent tow from private property makes a request for the release of the vehicle to the wrecker driver before the wrecker leaves the property, or if the tow is from public property and the vehicle owner makes the request before the wrecker leaves the scene, the driver must stop and release the vehicle. Charging or collecting a "show up fee" is prohibited. A "drop fee" is authorized only if the request for release of the vehicle is made after it is fully prepared for transport by attachment to the tow truck, lifted into position for towing with tow lights and safety chains attached and, if required, placed on a dolly and ready to be driven away. The driver must release the vehicle to the vehicle owner upon payment of a drop fee, if authorized or upon the request of the owner if charging a drop fee is prohibited because the vehicle is not fully prepared for transport. This subsection does not apply if the vehicle is disabled or is being impounded by a peace officer, or if the vehicle owner is disabled, has been arrested, or for any other reason is unable to operate the vehicle.
- (c) Multiple vehicles. When more than one vehicle, such as a truck and trailer or an automobile and motorcycle, are both towed by a single wrecker, the wrecker service will charge not more than the amount set by the city council for towing the second vehicle with a single wrecker.
- (d) It is unlawful for any driver, employee or agent of a wrecker service to make any verbal or written representation to the owner of a towed vehicle that the amounts of wrecker fees are set by the city, or that the city requires the

wrecker service to charge certain amounts for its services. An employee, agent or wrecker driver of a wrecker service is expressly authorized to state to the owner of a towed vehicle that the city limits the amount a wrecker service can charge for its services.

- (e) A wrecker service must accept all of the following forms of payment for wrecker service charges for a non-consent tow, show up fee or drop fee:
 - (1) Cash.
 - (2) One party personal check from a bank with a branch location in San Marcos, Texas.
 - (3) Money order or traveler's check.
 - (4) Credit card.
- (f) It is unlawful for a person who makes payment for wrecker service charges by personal check or credit card to stop payment on the check or rescind a credit card charge. Persons who wish to contest the propriety of a non-consent tow must request a hearing with the justice court under the Texas Occupations Code, Chapter 2308.

Sec. 90.291. Limits on fee amounts.

(a) *Category A wreckers:*

Service Description	Max. fee
1. Police-authorized tow from accident scene - a flat fee of \$150.00 <u>\$200.00</u> unless a police officer determines that any of the following services are needed:	\$150.00 <u>\$200.00</u>
a. Waiting time - each additional ½ hour after the first ½ hour - \$50.00 <u>\$70.00</u> .	
b. Winching fee - \$50.00 <u>\$70.00</u> per ½ hour.	
c. Additional labor for clean-up - \$50.00 <u>\$70.00</u> per ½ hour.	
d. Dollies - \$70.00	
2. Police-authorized tow - Impound/non-accident (all inclusive) [double hookup, dollies, winching, flatbed,	\$150.00 <u>\$200.00</u>

waiting time, cleanup etc.)]	
3. All other non-consent tows (all inclusive [double hookup, dollies, winching, flatbed, etc.]).	\$75.00 <u>\$125.00</u>
4. Show-up fee - For non-consent tow where owner requests release of vehicle after the wrecker is in position and ready to connect to the vehicle, but before wheels are lifted. May not be charged if a drop fee is charged or if prohibited by Sec. 90.290.	\$50.00 <u>\$70.00</u>
5. Drop fee - For non-consent tow where owner requests release of vehicle after wheels are lifted but before it leaves the property. May not be charged if a show-up fee is charged.	\$50.00

(b) *Category B wreckers:*

Service Description	Max. fee
1. Police-authorized tow from accident scene	Not regulated
2. Police-authorized tow —impound/non-accident (all inclusive [double hookup, dollies, winching, flatbed, waiting time, cleanup etc.]	\$500.00 <u>\$700.00</u>
3. All other non-consent tows (all inclusive [double hookup, dollies, winching, flatbed, etc.]	\$500.00 <u>\$700.00</u>

(c) *Miscellaneous and storage fees.* Fees charged for vehicle storage, owner notification and other services provided by storage facilities for non-consent

tows originating in the city limits shall not exceed the limitations set in the ~~Vehicle~~ Vehicle Storage Facility Act or Storage Facility Regulations.

Sec. 90.292. Invoices.

- (a) A wrecker service must provide each vehicle owner who reclaims a towed vehicle with an invoice in accordance with this section at the time a towed vehicle is reclaimed.
- (b) Each invoice must include the wrecker service name, business address and phone number, the name of the wrecker driver who performed the tow, the date and time of the tow, the date and time the vehicle was reclaimed, and an itemized statement of the charges. Each invoice must have all of the following information printed on the front or back of the invoice, or printed on a separate sheet that is physically attached to the invoice:
 - (1) A schedule listing the maximum wrecker fees set by the city council.
 - (2) The following statement, in at least 10-point type:

San Marcos City Ordinance limits, but does not set, the amounts that can be charged for towing vehicles, and requires wrecker services and vehicle storage facilities to accept cash, one-party personal checks, money orders, traveler's checks and credit cards for payment of fees. The ordinance also prohibits a person who pays with a check or credit card from stopping or canceling the payment. Persons who wish to contest the propriety of a tow or to contest charges claimed to be excessive may request a hearing at a justice court. Persons who wish to contest charges claimed to be excessive for police-authorized tows may file a written complaint with the San Marcos Chief of Police.
- (c) If a single invoice is used for wrecker service charges and vehicle storage facility charges, a combined schedule of the maximum wrecker service and vehicle storage fees may be used on the invoice, together with the statement in (b)(2).

Sec. 90.293. Complaints of excessive fees.

- (a) A rotation list wrecker service, a wrecker service registered to perform non-consent towing or a participating storage facility must respond to each written complaint received by the service or facility, or by the ~~chief of police~~ City Marshal, related to excessive charges for any non-consent tow. The response must be in writing to the person complaining, with a copy to the ~~chief of police~~ City Marshal and must be sent within ten days of receipt of the complaint.
- (b) The ~~chief of police~~ City Marshal may suspend the wrecker service or participating storage facility for a period of up to 90 days and/or cause misdemeanor charges to be brought against the rotation list wrecker company or participating storage facility if probable cause exists to believe

that a prohibited or excessive fee or charge was made for a non-consent tow, show up fee, or drop fee.

- (c) For a rotation wrecker service or a participating storage facility, a failure to refund excess charges within 15 days of the ~~police chief's~~ City Marshal's decision will result in automatic suspension from the rotation system or from the list of participating storage facilities until the refund is made.

Sec. 90.294. Duty to report.

A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the San Marcos Police Department:

- (1) A general description of the vehicle;
- (2) The state and number of the vehicle's license plate, if any;
- (3) The vehicle identification number of the vehicle, if it can be ascertained;
- (4) The location from which the vehicle was towed;
- (5) The name and location of the vehicle storage facility where the vehicle is being stored.
- (6) The report required by this section must be made by telephone or electronically or delivered personally or by facsimile.
- (7) This section does not apply to a vehicle received as a result of a police-authorized tow.

Sec. 90.295. Penalty Matrix.

<u>Level 1 Violations</u>	<u>3 or more in a 12-month period will result in a mandatory 15-day suspension</u>
(a) <u>Failure to report Private Property Tow within 2-hour time frame</u>	<u>2-day suspension</u>
(b) <u>Failure to respond to complaint within 10 days</u>	<u>3-day suspension</u>
(c) <u>Failure to correct inspection failures within required time</u>	<u>4-day suspension</u>
(d) <u>Failure to ensure wrecker is properly equipped</u>	<u>4-day suspension</u>
(e) <u>Failure to remove and properly dispose of debris</u>	<u>2-day suspension</u>

(f) <u>Failure to respond to location within 30 minutes</u>	<u>2-day suspension</u>
<u>Level 2 Violations</u>	<u>3 or more in a 12-month period will result in a mandatory 30-day suspension</u>
(a) <u>Failure to respond to calls 24 hours per day</u>	<u>3-day suspension</u>
(b) <u>Soliciting business at or near a police scene</u>	<u>3-day suspension</u>
(c) <u>Failure to provide wrecker ticket to individual reclaiming a vehicle before paying fees or charges</u>	<u>5-day suspension</u>
(d) <u>Failure to provide attendant</u>	<u>3-day suspension</u>
(e) <u>Failure to provide invoice</u>	<u>4-day suspension</u>
<u>Level 3 Violations</u>	<u>3 or more in a 12-month period will result in a mandatory 60-day suspension</u>
(a) <u>Charging inappropriate drop or show-up fees</u>	<u>1 week suspension</u>
(b) <u>Charging excessive fees and charges</u>	<u>1 week suspension</u>
(c) <u>Failure to obey officer or fire fighters</u>	<u>2-week suspension</u>
(d) <u>Vehicle towed without signage present</u>	<u>1 week suspension</u>
(e) <u>Removal of vehicle from ETJ limits</u>	<u>3-week suspension</u>
<u>Level 4 Violations</u>	<u>Removal from rotation and non-consent towing privileges revoked</u>
<u>Removal of vehicle from public property without direction of</u>	

<u>officer or parking technician</u>	
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Secs. ~~90.294~~ 90.296—90.300. Reserved.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. Any person or corporation found to be in violation of the provisions of this ordinance shall be guilty of a misdemeanor. Each day that the provisions of this ordinance are violated shall constitute a separate and distinct offense.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. In codifying the changes authorized by this ordinance, non-substantive clerical and grammatical errors may be corrected and paragraphs, sections and subsections may be renumbered and reformatted, as appropriate, consistent with the numbering and formatting of the San Marcos City Code.

SECTION 6. This ordinance takes effect after publication in accordance with the City Charter.

PASSED AND APPROVED on first reading on August 5, 2024.

PASSED, APPROVED, AND ADOPTED on second reading on August 20, 2024.

Jane Hughson
Mayor

ATTEST:

APPROVED:

Elizabeth Trevino
City Clerk

Samuel J. Aguirre
City Attorney

Published: _____

Effective
Date: _____