

ORDINANCE NO. 1078

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BEAUMONT, CALIFORNIA
ADDING SECTION 5.51
“ROTATIONAL NON CONSENSUAL TOWING SERVICES,” TO CHAPTER 5 OF
THE BEAUMONT MUNICIPAL CODE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEAUMONT, RIVERSIDE COUNTY, STATE OF CALIFORNIA AS FOLLOWS:

SECTION 1. CEQA. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to 15061(b)(3), CEQA review is not required because there is no possibility that this Ordinance may have a significant effect upon the environment and the proposed text addition constitute a minor alteration in a land use limitation under CEQA Guidelines Section 15305, and such a land use limitation is a permissible exercise of the City’s zoning powers.

SECTION 2. Severability. The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences, or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 3. Prosecution of Prior Ordinances. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the City of Beaumont Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 4. The City Council hereby adds Title 5.51, entitled “ROTATIONAL NON CONSENSUAL TOWING SERVICES” to the Beaumont Municipal Code, to read as specifically set forth in Exhibit “A”, which Exhibit is attached hereto and made a part hereof.

SECTION 5. Effective Date and Publication. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within 15 days after adoption in accordance with Government Code Section 36933. This Ordinance shall take effect 30 days after adoption in accordance with Government Code Section 36937.

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Beaumont, California, approves an addition to the City Code.

INTRODUCED AND READ for the first time and ordered posted at a regular meeting of the City Council of the City of Beaumont, California, held on the 15th day of November, 2016, by the following roll call vote:

AYES: Orozco, Knight, Condon, White, Lara

NOES: None

ABSENT: None

ABSTAIN: None

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Beaumont, California, held on the 6th day of December, 2016.

AYES: Orozco, Knight, Condon, White, Lara

NOES: None

ABSENT: None

ABSTAIN: None



Mike Lara, Mayor

Attest:



Julio Martinez, City Clerk

Approved as to form:



John O. Pinkney, City Attorney

EXHIBIT A

Chapter 5.51

ROTATIONAL NON-CONSENSUAL TOWING SERVICES

Sections:

- 5.51.010 Purpose.**
- 5.51.020 Definitions.**
- 5.51.030 Non-consensual towing without city contract - prohibited.**
- 5.51.040 Rules and specifications.**
- 5.51.050 Selection of number of authorized towing contractors.**
- 5.51.060 Selection of authorized towing contractors.**
- 5.51.070 Rotation list.**
- 5.51.080 Execution of towing service agreement.**
- 5.51.090 Authority for city to provide its own non-consensual towing services and vehicle storage facilities.**
- 5.51.100 Penalties.**

5.51.010 Purpose.

(A) The purpose of this chapter is to establish towing regulations to govern the provisions of non-consensual towing services to the city's Police Department, consistent with state and federal laws, as well as the public health, safety and welfare. A further purpose is to insure that the best possible towing operators are selected to participate in the city's rotational tow program to assist the Police Department in conducting efficient police investigations and provide the citizens of Beaumont with prompt, safe and comprehensive towing services.

(B) These regulations are not intended to govern situations where towing has been requested by vehicle owners or private property owners, except as may be permitted by law. Instead, these regulations, along with the rules and specifications to be promulgated by the Police Chief in conjunction with this chapter, are intended to provide a fair and objective method of selecting towing operators from among qualified towing companies to insure that selected towing operators and tow drivers provide the Police Department and the public with prompt, safe, reliable and responsive towing services using quality towing technology and vehicle towing and storage safety.

5.51.020 Definitions. Unless the context of a particular provision otherwise requires, the definitions provided in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

- (A) "**Authorized towing contractor**" shall mean a towing company that provides non-consensual towing service to the city pursuant to a towing service agreement.
- (B) "**Business license**" shall mean a license issued by the city's Finance Department upon payment of a tax by an authorized towing contractor selected to provide nonconsensual towing services to the city's Police Department pursuant to this chapter.

- (C) **"City"** shall mean the City of Beaumont.
- (D) **"City Manager"** shall mean the City Manager of the City of Beaumont or his or her designee.
- (E) **"Non-consensual towing service"** shall mean towing services lawfully ordered or requested by an employee of the city's Police Department or other city department who is duly authorized by law to remove, impound or store vehicles.
- (F) **"Police Chief"** shall mean the Chief of Police of the City of Beaumont or his or her designee.
- (G) **"Police Department"** shall mean the Beaumont Police Department.
- (H) **"Rotation list"** shall mean the city's list of authorized towing contractors that have executed a towing service agreement with the city and may be called upon by the Police Department to provide non-consensual towing service, as needed, on a rotational, call-by-call basis.
- (I) **"Rules and specifications"** shall mean the city's Rules and Specifications for Towing Services and Vehicle Storage Facilities promulgated by the Police Chief, as further described in § 5.51.040.
- (J) **"Tow driver"** shall mean the driver of a tow vehicle used for providing non-consensual towing services to the city.
- (K) **"Tow vehicle"** shall mean a motor vehicle owned by an authorized towing contractor, which has been altered or designed or equipped for and exclusively used in the business of towing vehicles by means of a crane, tow bar, tow line, dolly or a roll-back carrier or is otherwise used to render emergency assistance to disabled and other vehicles.
- (L) **"Towing company"** shall mean a company that provides towing services and the owner(s) and/or managing employee(s) of said company.
- (M) **"Towing service"** shall mean roadside assistance, as well as the removal, towing, storing, or related services for a vehicle. Towing service shall include the removal, transport, and disposal all debris and fluids, including oil and gasoline, in compliance with all applicable federal, state and local regulations concerning hazardous materials.
- (N) **"Towing service agreement"** shall mean the agreement described in § 5.51.080 that each authorized towing contractor selected to provide non-consensual towing services to the city is required to execute pursuant to this chapter.
- (O) **"Vehicle storage facility"** shall mean a garage, parking lot, storage lot, or any type of facility where vehicles are stored.

5.51.030 Non-consensual towing without city contract - Prohibited. No person, including, without limitation, a towing company shall perform or provide non-consensual towing services in the city unless the person has entered into a towing service agreement with the city to perform or provide such services.

5.51.040 Rules and specifications. The Police Chief shall promulgate written rules and specifications for non-consensual towing services, authorized towing contractors, tow drivers and vehicle storage facilities. The rules and specifications may be modified from time to time as deemed appropriate by the Police Chief. The rules and specifications shall include reasonable provisions respecting the character, extent, quality and standards governing non-consensual towing services and vehicle storage facilities that are provided and used by the authorized towing contractors. The rules and specifications may also require the payment of fees in an amount established by resolution of the City Council to cover the city's costs associated with the implementation of this chapter, including, without limitation, the review of proposals submitted by towing companies, background checks and fingerprinting, inspection of a towing company's vehicles, equipment and facilities and audits of a towing company's records.

5.51.050 Selection of number of authorized towing contractors.

(A) **Timing.** At least every five (5) years, the Police Chief shall determine the number of authorized towing contractors needed to provide non-consensual towing services to the city. Notwithstanding anything to the contrary contained in this chapter, the Police Chief may review the number of authorized towing contractors needed to provide non-consensual towing services to the city more frequently than every five (5) years and may make a determination that fewer or additional authorized towing contractors are needed.

(B) **Criteria.** The Police Chief's determination shall be based upon the appropriate number of authorized towing contractors that may be required by the public convenience and necessity and for the efficient operation of the Police Department. In determining the required number of authorized towing contractors, the Police Chief shall consider the following factors:

- (1) The operational needs of the Police Department;
- (2) The population of the city;
- (3) The current land area of the city;
- (4) The number of current authorized towing contractors and their average response times;
- (5) The administrative burdens created by the number of authorized towing contractors to be included on the rotation list; and
- (6) Other relevant, objective factors as determined by the Police Chief.

(C) **Determination by Police Chief.** The Police Chief's determination shall be made in writing and shall include the number of authorized towing contractors to be selected and a brief statement as to reasons for the Police Chief's determination. Notwithstanding anything to the contrary contained in this chapter, the Police Chief may also determine that the current number of authorized towing contractors is sufficient to serve the city for an additional period of time to be determined by the Police Chief. If the Police Chief determines that the current number of authorized towing contractors is sufficient or that fewer authorized towing contractors are needed, the Police Chief is not required to complete the request for proposal process set forth in

§ 5.51.060 and may extend the existing towing service agreements of all or some of the current authorized towing contractors.

(D) **Notice.** The Police Chief's written determination shall be attached to the rules and specifications and shall be posted for a period of ten days in the same manner that city meeting agendas are posted.

(E) **Appeal to City Manager.** Within ten calendar days of such determination and posting, any interested person may submit a letter to the City Clerk requesting that the City Manager review the Police Chief's determination regarding the number of authorized towing contractors to be selected. The letter shall include information demonstrating why the public convenience and necessity require selecting additional or fewer authorized towing contractors, and shall be based upon the factors contained in division (B) above. Within 30 calendar days of receipt of the letter, the matter shall be set for an appeal hearing before the City Manager. The City Manager, in his sole discretion, may refer such appeal hearing and decision to an impartial hearing officer, provided the hearing officer follows all provisions of this chapter for the conduct of the hearing. All existing authorized towing contractors shall be notified by letter at least five days prior to any such hearing. No change in the number of authorized towing contractors shall be implemented until the City Manager or hearing officer have heard the appeal and rendered a decision. The decision of the City Manager or hearing officer shall be in writing and shall be final.

(F) **Appeal criteria.** In determining whether to uphold the Police Chief's determination, the City Manager or hearing officer shall consider the factors contained in division (A) above.

(G) **Change in numbers at other times.** Nothing in this section shall prohibit the Police Chief, City Manager or hearing officer from determining at any time that the public convenience and necessity require the selection of additional authorized towing contractors or the extension of existing towing service agreements between the city and current authorized towing contractors, upon finding that circumstances and conditions exist that necessitate the selection of additional authorized towing contractors or the extension of existing towing service agreements for the efficient operations of the Police Department.

5.51.060 **Selection of authorized towing contractors.**

(A) **Request for proposals.** Unless a determination has been made pursuant to § 5.51.050(C) that the current number of authorized towing contractors is sufficient or that fewer authorized towing contractors are needed and thus the towing service agreements with some or all of the existing authorized towing contractors are extended, once the Police Chief, or the City Manager or hearing officer in the case of an appeal, has determined the appropriate number of authorized towing contractors needed to provide non-consensual towing services to the city, the Police Chief shall prepare and advertise a request for proposals for qualified towing companies to perform and provide non-consensual towing services to the city. The content of the request for proposals, the process for selecting qualified towing companies and the process for awarding a towing service agreement to qualified towing companies shall be set forth in the rules and specifications. The Police Chief may select one or more qualified towing companies as

authorized towing contractors in accordance with the procedures set forth in the rules and specifications.

(B) **Appeal to City Manager.** The Police Chief's decision with respect to the selection of one or more authorized towing contractors may be appealed in writing to the City Manager within ten calendar days of the decision. The appeal shall contain a statement of the reasons for the appeal. Upon receipt of a timely appeal, the City Manager shall review the statement of reasons contained in the appeal and hold an appeal hearing to determine whether the Police Chief's decision comports with all requirements for selection contained in the rules and specifications. The City Manager, in his sole discretion, may refer such appeal hearing and decision to an impartial hearing officer, provided the hearing officer follows all provisions of this chapter for the conduct of such hearing. All existing authorized towing contractors shall be notified by letter at least five days prior to any such hearing. No selection of authorized towing contractors shall be implemented until the City Manager or hearing officer have heard the appeal and rendered a decision. The City Manager or hearing officer shall render a written decision within ten calendar days of the receipt of an appeal. The City Manager's or hearing officer's decision shall be in writing and shall be final.

(C) **Commencement of services.** All towing companies selected to be authorized towing contractors shall assume such duties on January 1 of the year following the year in which they are selected, or as otherwise determined by the Police Chief and set forth in the towing service agreement.

5.51.070 **Rotation list.** All authorized towing contractors shall abide by the towing rotation policy section of the rules and specifications. The rotation list may be amended from time to time as part of the Police Chief's promulgation or modification of the rules and specifications.

5.51.080 **Execution of towing service agreement.**

(A) **Form of agreement; execution.** Any towing company selected to be an authorized towing contractor shall enter into a towing service agreement with the city. The towing service agreement shall be in a form approved by the City Attorney and shall be attached to any request for proposals issued pursuant to § 5.51.060. Each authorized towing contractor shall execute the towing service agreement, in the form approved by the City Attorney within 30 calendar days after selection as an authorized towing contractor. By submitting a proposal, each towing company shall be deemed to have agreed to execute the towing service agreement in the form attached to the request for proposals. The Police Chief is authorized to execute towing service agreements on behalf of the city.

(B) **Terms of agreement.** The towing service agreement shall incorporate the terms and conditions of this chapter and the rules and specifications, and shall include, without limitation, at least the following provisions:

(1) Minimum requirements and performance standards for tow vehicles and other equipment, vehicle storage facilities, tow drivers and other personnel, and non-consensual towing services.

- (2) Procedures for handling and protecting vehicles in the authorized towing contractor's care, custody or control.
- (3) Conditions for releasing vehicles.
- (4) A provision requiring the authorized towing contractor to defend, indemnify, and hold the city harmless of any liability arising from the alleged acts, errors or omissions of the authorized towing contractor in connection with the non-consensual towing services or the towing service agreement.
- (5) Minimum insurance coverages and amounts, satisfactory to the city's risk manager.
- (6) The term of the agreement and grounds for its suspension, termination or cancellation. Notwithstanding anything to the contrary in this chapter or in the rules and specifications, the Police Chief shall have the right to terminate any authorized towing contractor at any time and without cause by giving written notice before the effective date of such termination.

5.51.090 **Authority for city to provide its own non-consensual towing services and vehicle storage facilities.** Nothing in this chapter shall be construed to restrict or prohibit the city from conducting or providing its own non-consensual towing service or maintaining its own vehicle storage facilities, either in lieu of, or in addition to, any non-consensual towing services provided by an authorized towing contractor pursuant to this chapter, the rules and specifications or a towing service agreement.

5.51.100 **Penalties.** Any person, including, but not limited to, any authorized towing contractor, tow driver or towing company who violates any provision of this chapter shall be guilty of a misdemeanor. In addition, any authorized towing contractor or tow driver that violates any provision of the rules and specifications shall be subject to the suspension and termination provisions contained in the towing services agreement and/or the rules and specifications.