AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO. 17-062-00

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 4.10 AND SECTION A4.008 OF THE APPENDIX A FEE SCHEDULE OF THE CITY OF LEANDER CODE OF ORDINANCES REGULATING WRECKER SERVICES; ADDING DEFINITIONS; UPDATING FEES RELATED TO NON-CONSENT TOWS; ESTABLISHING WRECKER VEHICLE REQUIREMENTS, OPERATIONAL RESPONSE REGULATIONS AND DUTIES OF WRECKER OPERATOR PERMIT HOLDERS; UPDATING ROTATION LIST PROCEDURES; PROVIDING FOR ENFORCEMENT AND PENALTY CLAUSES; PROVIDING FOR OPEN MEETINGS; SEVERABILITY, AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Leander, Texas (herein the “City”), desires to review and update wrecker services, operations, fees and regulations within the City; and

WHEREAS, the City recognizes that the unregulated operation of tow trucks diminishes the efficiency and effectiveness of the City’s public safety function through its police force; and

WHEREAS, the City finds it reasonable and lawful to regulate tow truck operations within the City in order to preserve safe operations, preserve uniform fairness in the use of tow services within the City’s jurisdiction and to protect the public’s interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

Section 1. Findings of Fact. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amending Article 4.10, Wrecker Service, of the Leander Code of Ordinances. Article 4.10, Wrecker Service, of the Leander Code of Ordinances, is hereby amended in its entirety to read as follows:

ARTICLE 4.10 WRECKER SERVICE

Sec. 4.10.001 Definitions
For the purpose of this Article, the following terms shall have the meanings respectively ascribed to them in this section:
Abandoned vehicle. A motor vehicle that has been left on private property without the consent of the property owner for a period in excess of five (5) calendar days or as defined by Section 683.002 of the Texas Transportation Code, as amended.

Consent tow. Any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle, as defined by 16 Texas Administrative Code, Section 86.10(5), as amended. The term does not include an incident management tow or a private property tow.

Heavy duty tow. Any tow of a motor vehicle with a gross weight rating that exceeds 25,000 pounds, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended.

Illegally parked vehicle. Any motor vehicle alleged to be in violation of Section 12.04 of this Code, or in violation of applicable parking regulations of the Texas Transportation Code, as amended.

Incident management tow. Any tow of a vehicle in which the tow truck is summoned by the Leander Police Department to the scene of a traffic collision or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an collision or incident scene, as defined by 16 Texas Administrative Code, Section 86.10(11), as amended. The term shall also include tows incident to arrest, traffic hazards and illegally parked vehicles, and tows of abandoned vehicles initiated by the Leander Police Department.

Light duty tow. Any standard tow of a motor vehicle with a gross weight rating of 10,000 pounds or less, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended.

Medium duty tow. Any tows of a motor vehicle with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended.

Non-consent tow. Any tow of a motor vehicle that is not a consent tow, including an incident management tow and a private property tow, as defined by 16 Texas Administrative Code, Section 86.10(13), as amended.

Permit holder. Any wrecker company possessing a current, valid permit to engage in towing from the wrecker rotation lists in the City. A permit holder’s primary business office shall be located and maintained within the corporate limits of the city, its extraterritorial jurisdiction, or within ten (10) miles of those areas.

Private property tow. Any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle, as defined by 16 Texas Administrative Code, Section 86.10(18), as amended.

Vehicle storage facility. A vehicle storage facility, as defined by Texas Occupations Code, Section 2303.002, as amended, that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

Wrecker company. A person or legal entity operating a tow truck over public roadways in the State of Texas as defined by 16 Texas Administrative Code, Section 86.10(22), as
amended. The term includes the owner, operator, employee, or agent of a towing company, but does not include a political subdivision of the State. Each wrecker company shall maintain a single unique Texas Department of Licensing and Regulation (TDLR) number.

**Wrecker rotation list.** A list of permit holders prepared in accordance with the provisions of this Article, as amended.

**Sec. 4.10.002 Applicability**

This Article applies to all wrecker movements within the city, except for those performed by governmental entities or directed by law enforcement.

a) Unless exempted by State law, it shall be unlawful for any person to operate a wrecker company, or to perform wrecker movements for incident management tows or private property tows in the city without a permit issued in accordance with this Article.

b) A wrecker company that has a proper certificate of registration or permit from the State of Texas is not required to obtain a permit from the city under this Article in order to perform consent or non-consent tows within, from, or through the limits of the city; provided, however, that non-consent tows originating within the corporate limits of the city or roadways subject to its jurisdiction shall be subject to Appendix A, Section A4.008.

c) All permit holders under this Article shall comply with all applicable State laws. Failure to comply with State laws will be a violation of this Article.

**Sec. 4.10.003 General Regulations**

(a) No person shall drive or cause to be driven a wrecker to or near the scene of a collision on a public roadway in the city or any roadway subject to the city’s jurisdiction unless such person has been called by the police department. In situations where a wrecker driver is a certified emergency medical technician, such driver may stop and render aid as required by law but such wrecker driver will not be able to tow at such collision except pursuant to the rotation list.

(b) No permit holder or his employees shall solicit in any manner, directly or indirectly, on the streets of the city, wrecker business involving any vehicle which is wrecked on a public street. This prohibition applies regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading, selling or purchasing such vehicle. Proof of the presence of any person engaged in the wrecker business, whether or not certified or identified under the provisions of this article, except a wrecker called pursuant to the provisions of this article, at or near the scene or site of a wreck or collision on any public street in the city after the occurrence of a wreck and prior to removal of all disabled or damaged vehicles shall be prima facie evidence of a solicitation in violation of this article.

(c) All wrecker drivers arriving at the place where any collision has occurred shall obey all lawful orders given them by any police officer investigating such collision and shall not in any manner interfere with such officer in the performance of his duty.
(d) Whenever a wrecker arrives at the place where a vehicle has been disabled, the wrecker driver shall park the wrecker as close to the roadway curb as possible and otherwise dispose of it in a manner that does not interfere with traffic. The wrecker driver shall not park their vehicle within a distance of twenty-five (25) feet from a wrecked or disabled vehicle.

(e) It shall be the duty of the driver of each wrecker that removes a wrecked, damaged or disabled vehicle from the place where a collision has occurred to clear and remove any and all debris, parts, glass or vehicle fluids as the result of an collision or collision from the roadway to the satisfaction of the officer investigating the collision. In the event two (2) or more wreckers pick up vehicles for towing, it shall be the duty of each driver to clear and remove debris, parts or glass from the roadway.

Sec. 4.10.004  Wrecker Requirements

(a) General

(1) All permit holders shall maintain at least one wrecker, and shall maintain all wreckers in accordance with the requirements of this Article and Title 16, Chapter 86 of the Texas Administrative Code, as amended.

(2) All wreckers shall maintain a valid Incident Management Towing Permit pursuant to Title 16, Chapter 86 of the Texas Administrative Code, as amended and be in such condition that they can safely and readily be used as a wrecker for incident management tows.

(b) Wrecker lifting capacity. Each wrecker shall be equipped with a power operated winch with a lifting capacity of not less than eight thousand (8,000) pounds single line capacity, as reflected by a manufacturer’s certificate.

(c) Standard equipment

(1) Each wrecker shall carry as standard equipment: two (2) safety chains appropriate for load securement, one (1) 2.5 pound A.B.C. fire extinguisher, wrecker bar, absorbent, broom and dust pan.

(2) Each wrecker with a rated capacity of three (3) tons or greater shall be equipped with booster brakes.

(3) Each wrecker must be equipped with dual rear tires.

(4) Upon request of a police officer or vehicle owner, the permit holder must make available a wrecker with a specially designed wheel lift attachment. This need not be a requirement for every wrecker unit, but each permit holder must own at least one (1) so equipped.

(d) Carrying capacity. Each wrecker’s carrying capacity shall not be less than one (1) ton as reflected on the manufacturer’s certificate for the vehicle.
(e) Name. In addition to the requirements of Title 16 of Texas Administrative Code, Section 86.701, as amended, each wrecker must have the permit holder’s name, phone number, address, and permit number permanently displayed on each side of the wrecker at least two (2) inches in size and in a color that contrasts with the color of the background surface.

(f) All vehicle storage facilities used to store vehicles towed from incident management tows or private property tows pursuant to this Article shall be located within the corporate limits of the city, its extraterritorial jurisdiction, or within ten (10) miles of those areas. All vehicle storage facilities must be licensed by the State of Texas and must comply with all applicable requirements of Title 16, Chapter 85 of the Texas Administrative Code, as amended.

(g) Service hours. A permit holder operating a wrecker, must maintain a twenty-four (24) hour wrecker service, seven (7) days a week, and have two (2) telephone numbers, one of which is answered twenty-four (24) hours a day, seven (7) days a week. The permit holder must be able to immediately advise the chief of police, or designee, of the availability of a tow truck. The wrecker company must have two-way voice communication between the wrecker and the wrecker company’s office.

Sec. 4.10.005 Duties of Permit Holders

(a) Compliance. All permit holders shall comply with all applicable requirements of Title 16, Chapter 86 of the Texas Administrative Code, as amended. No operator shall perform an incident management tow under this Article without valid Incident Management Towing Operator License pursuant to Title 16 of the Texas Administrative Code, Section 86.209, as amended.

(1) All permit holders shall respond to a call anywhere in the corporate limits of the city or roadway subject to the city’s jurisdiction by arriving at the scene of the collision or incident within thirty (30) minutes of the requesting officer’s call for service. If the responding wrecker fails to meet this time requirement without justification acceptable to the police communications center, whether in route or not, the call shall immediately be canceled and the next rotation wrecker called and police communications center notifies the requesting officer. Additional response time may be added, at the discretion of the requesting officer, when the permit holder is responding with non-standard equipment to handle a request.

(2) Any permit holder unable or failing to respond, for whatever reason, for five (5) times or three (3) consecutive times during any one (1) year, shall be subject to suspension and/or revocation pursuant to this Article, as amended.

(3) All permit holders shall store all vehicles towed under the provisions of this Article at their respective vehicle storage facility unless the owner of the vehicle and permit holder agree to take the vehicle to another location.

(4) Maintenance of records. Each permit holder shall make his records available for inspection by the chief of police or their designee during regular business hours at the primary business office of the permit holder, which shall be located and maintained
within the corporate limits of the city, its extraterritorial jurisdiction, or within ten (10) miles of those areas.

(b) Parking in residential areas. Except in the following situations, no person shall park or stand a wrecker in the public right-of-way in a residential area within the corporate limits of the city:

(1) Where a tow has been requested;

(2) Where a wrecker has become inoperable and is waiting for transportation to a repair facility; or

(3) Where the police department has directed such.

(c) Each and every wrecker service shall notify the operator or owner of any disabled or wrecked vehicle of the location of the facility to be used by the wrecker service.

**Sec. 4.10.006 Wrecker rotation list operation**

(a) The chief of police shall establish and cause to be maintained a wrecker rotation list of all validly permitted wrecker companies, which shall be used for all incident management tows.

(b) The wrecker rotation list shall be made available for inspection upon request during regular business hours. The list shall contain a designation of each permit holder qualified to be on the list in order of rotation list number. The wrecker rotation list shall be limited to seven (7) wrecker companies. Such number shall be reviewed every two (2) years, or at the discretion of the chief of police, which such number may be adjusted by resolution of the City Council. As each new permit holder becomes qualified, it shall be placed at the end of the rotation list.

(c) Vehicle operator to designate wrecker company. When a police officer investigating an incident management scene, which may be a traffic hazard but not causing disruption to any traffic patterns, determines that any vehicle involved is unable to safely proceed under its own power, or when the police officer determines that the driver of any vehicle involved in a collision is physically unable to safely move the vehicle to a location out of the right of way where it will no longer create a traffic hazard, such officer should first attempt to communicate with the driver on scene to designate the permit holder he desires to remove the vehicle, and the police officer shall cause the driver’s designee to be contacted.

(d) Wrecker rotation list operation. In the event a police officer requires the removal of a vehicle and the vehicle operator does not designate the permit holder of his choice, due to the operator’s arrest, inability or incapacitation, or the vehicle cannot be moved to a safe location out of the right of way of the roadway and the vehicle is an immediate hazard creating a traffic pattern disruption, the officer shall request the permit holder next on the wrecker rotation list to be called.
(e) The fee charged by a permit holder for tows, tow-related services and equipment, and storage of vehicles towed pursuant to this Article shall not exceed the lower of the maximum allowable fee set forth in the Fee Schedule presented in the Appendix of this Code, as amended, or the maximum allowable fee provided by State law, as amended.

(f) Pursuant to Texas Occupations Code, Section 2308.203, as amended, a towing company subject to this Article may request a towing fee study be performed by submitting a written request to the chief of police and paying the applicable fee set forth in the Fee Schedule presented in the Appendix of this Code, as amended. No towing company shall be authorized to request a towing fee study within twenty-four (24) months of the completion of a prior towing fee study performed pursuant to this Section.

(g) Contractual agreement between wrecker owner and permit holder. A permit holder may contract with another permit holder for the use of permitted wreckers to provide services pursuant to this Article; however, no permit holder shall contract with more than one (1) other permit holder for such use of wreckers, and all contracted wreckers shall be permitted pursuant to this Article.

(h) Rental or additional equipment. There may be times where a wrecker company called to a scene by the city needs to rent or bring additional equipment to effectively handle an incident they would otherwise be unable to handle. Wrecker companies are hereby authorized to recover the fees associated with the necessary rental equipment to effectively handle a scene. See Fee Schedule in Appendix for allowable rates.

Sec. 4.10.007 Issuance and expiration of permits; renewal, addition and fee

(a) The chief of police shall issue a permit to engage in towing from the wrecker lists to approved applicants complying with the provisions of this Article. A permit may be evidenced by a windshield decal affixed to the vehicle.

(b) No permit may be issued for:

(1) Any person who had a financial interest in a wrecker business whose permit has been suspended, revoked or cancelled in excess of ten (10) days within the preceding twelve (12) months. This shall include any stockholders, officers, directors, managers or partners.

(2) Any person or company whose name appears on the current delinquent tax rolls of the city.

(c) Each company desiring to be included on the wrecker lists shall submit an application on a form provided by the chief of police or designee once an opening is published on the City of Leander website.

(d) Each permit holder must present the wreckers for inspection annually by January 1st at the police department, unless otherwise notified by the chief of police or designee.
(e) Each company desiring to be on the wrecker lists shall pay the city an inspection fee as provided for in the Fee Schedule presented in Appendix A of this Code, as amended.

(f) A wrecker company or wrecker failing to pass inspection shall pay a re-inspection fee as provided for in the Fee Schedule presented in Appendix A of this Code, as amended, for each additional inspection.

(g) Any company already permitted under this section, who wishes to add an additional wrecker to their fleet within a calendar year will still be required to pay the inspection fee and it will be in effect for the remainder of that calendar year as stated in this Article.

Sec. 4.10.007 Violation Procedures; Enforcement; Penalties

(a) The chief of police, or designee(s), shall enforce the terms and provisions of this Article. All references to “chief of police” or “police chief” in this Article shall include the chief of police and their designee(s), if any.

(b) The chief of police may promulgate procedures to carry out and enforce the provisions of this Article.

(c) Any person aggrieved by a permit holder, towing company, or operator subject to this Article may file a written complaint with the chief of police. The chief of police shall provide written notice of the complaint to the permit holder, towing company, or operator, and within a reasonable time thereafter the chief of police shall conduct a hearing regarding the complaint.

(d) If after such hearing the chief of police determines that there has been a violation of any of the terms of this Article or this Code, the chief of police may suspend, cancel, or revoke the permit of such permit holder as set forth below. If the chief of police determines that the permit holder or operator has failed to comply with any applicable requirement of Title 16, Chapter 86 of the Texas Administrative Code, as amended, then the chief of police may immediately revoke the permit and/or suspend/remove the permit holder or operator from the rotation and/or service lists. Within fifteen (15) days of the hearing, the police chief shall forward written notice of their findings and determination to the permit holder or operator.

(e) The permit holder, in cases of revocation, shall have the right to appeal to the City Council. The request for appeal must be made in writing to the City Secretary within ten (10) days of the police chief’s written determination. Upon receiving such request for appeal, the City Council, as soon as practicable thereafter, shall notify the appellant as to whether or not such an appeal will be heard. If the City Council approves such an appeal, it then may hear such and shall either sustain or reverse the revocation of the chief of police.

(f) If no appeal is taken from the police chief’s action within ten (10) days of notification, as set out herein, then the police chief’s decision shall be final.

(g) The period of administrative action per calendar year shall be as follows:
(1) For the first violation, not more than thirty (30) days;

(2) For the second violation, not more than ninety (90) days; and

(3) For the third or subsequent violation, such period of suspension, cancellation or revocation as the chief of police may determine, including permanent revocation.

(h) The administrative penalty set forth in this section shall be independent of and may be in addition to any other penalties assessed pursuant to any violation of this Code or State law. The determination of whether the violation is significant shall be within the sole discretion of the police chief.

Section 3. Amending Appendix A Fee Schedule, Section A4.008 of the Leander Code of Ordinances. Article A4.000, Section A4.008 Wrecker Service, of the Leander Code of Ordinances, is hereby amended in its entirety to read as follows:

Sec. A4.008 Wrecker towing fees

The following maximum allowable fees may be charged for wrecker operations originating within the City's corporate limits or any roadway subject to the City's jurisdiction

(a) Incident Management Tows:

(1) Light Duty Tows - $195.00

(2) Medium Duty Tows - $400.00

(3) Heavy Duty Tows - $800.00

(b) Additional Fees:

Storage - $20.00 per day (less than 25'); $35.00 per day (greater than 25')

Winching - $40.00 mechanical extraction of off-road vehicles (only one time for the first hour)

Waiting time at scene - $40.00 per hour, after the first hour on scene.

Rental equipment fees - Cost of the rented equipment plus an additional 15%.

Dollies - $40.00 supplementary wheel system for disabled vehicles.

In unusual and complicated situations, reloading truck or trailer, per man-hour: $40.00.

(c) Private Property Tows:

Light Duty Tows - $125.00

Medium Duty Tows - $300.00

Heavy Duty Tows - $400.00
Drop Fees:
Light duty drops - $75.00
Medium duty drops - $125.00
Heavy duty drops - $175.00

Inspection Fees:
(d) An inspection fee of $50.00 per truck shall be paid at time of inspection. Should any truck fail its annual inspection, a re-inspection fee of $25.00 shall be charged for each re-inspection. Additional trucks added to the permit holder’s fleet during the year will pay an inspection fee of $50.00 and the inspection expires as stated in the ordinance.

(e) $250.00 per tow fee study requested by a towing company pursuant to Section 2308.203 of the Texas Occupations Code.

Section 4. Enforcement. The Leander Police Department, Fire Department or authorized designee are authorized to enforce the provisions of these Articles.

Section 5. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting wrecker services within the City which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. Conflicting Ordinances. All prior Ordinances of the City dealing with or applicable to wrecker services are hereby amended only to the extent of any conflict with the amendments set forth herein, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 7. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 8. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov’t. Code.

Section 9. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Tex. Gov’t. Code.
PASSED AND APPROVED this the 21st day of September, 2017.

City of Leander, Texas

Christopher Fielder, Mayor

ATTEST:

Dara Crabtree, City Secretary

Ordinance amending Wrecker Service