

ORDER ESTABLISHING SERVICES AND MAXIMUM FEES RELATED TO LAW ENFORCEMENT
AGENCY-INITIATED, INCIDENT-MANAGEMENT, NON-CONSENT TOWING
IN NUECES COUNTY, TEXAS

WHEREAS, Nueces County law enforcement agencies are routinely required to initiate incident-management, non-consent towing of vehicles from areas within Nueces County where a driver has been arrested, has been involved in an accident, or has an otherwise disabled vehicle and fails or refuses to designate a tow-truck company to move the vehicle from public property (herein "Incident-Management tows"); and

WHEREAS, Incident-Management towing of vehicles does not provide an opportunity for the owners of the vehicles to participate in negotiating the towing services or maximum fees; and,

WHEREAS, in accordance with *Cardinal Towing & Auto Repairs, Inc. v. City of Bedford* (5TH Cir. 1990), Nueces County does not hereby regulate non-consent towing in the private sector, but rather in its proprietary capacity seeks to further the efficiency of Incident-Management tows by establishing: (1) services to be performed, including storage of vehicles, (2) associated maximum fees, and (3) that towing companies when (on request) are placed on the rotation-list of companies summoned for Incident-Management tows are herein deemed to concur and abide with these established services and fees; and,

WHEREAS, it is the intent of the Nueces County Commissioners Court to pre-establish the services to be provided and the maximum fees that can be charged for towing and storage of vehicles by any towing company that has properly applied and has qualified with the Nueces County Sheriff's Office to respond to calls from Nueces County law enforcement agencies to perform Incident-Management towing and storage of vehicles; and

NOW, THEREFORE, BE IT ORDERED that the Nueces County Commissioners Court does hereby establish the services and maximum fees related to Nueces County law enforcement agency-initiated, incident-management, non-consent towing within areas of Nueces County, Texas, as further described in Exhibit A, herein attached and incorporated in its entirety, for all Nueces County law enforcement agencies and officers. A copy of this order and its attachment shall be provided to all towing companies who are placed on the rotation-list of companies to be called by Nueces County law enforcement agencies to perform incident-management, non-consent towing and storage of vehicles. The effective date of this Order shall be _____, 2020. This Order supersedes all previous orders related to Nueces County Law Enforcement Agency-initiated, incident-management, non-consent towing.

DULY ADOPTED BY VOTE OF THE COMMISSIONERS COURT OF NUECES COUNTY, TEXAS
ON THIS THE ____ DAY OF _____, 2020.

BARBARA CANALES
Nueces County Judge

CAROLYN VAUGHN
Nueces County Commissioner, Prct. 1

JOE A. GONZALEZ
Nueces County Commissioner, Prct. 2

JOHN MAREZ
Nueces County Commissioner, Prct. 3

BRENT CHESNEY
Nueces County Commissioner, Prct. 4

Attested to: _____
KARA SANDS
Nueces County Clerk

AUTHORIZED SERVICES AND MAXIMUM FEES FOR NTJECES COUNTY LAW
ENFORCEMENT AGENCY-INITIATED, INCIDENT MANAGEMENT, NON-
CONSENT TOWING

Sec. 1: Definitions.

Approved list- The list of tow truck operators that have made application and have provided all necessary and required documentation to the Nueces County Sheriffs Office to qualify to be called upon by any Nueces County law enforcement agency to perform incident-management, non-consent towing of vehicles. (Tow truck operators appear and remain on the approved list at the pleasure of the Nueces County Sheriffs Office, and the Nueces County Sheriffs Office reserves the right to remove from the approved list, unilaterally and without notice, any tow truck operator that the Nueces County Sheriffs Office deems has violated any of the provisions of this order, or any applicable federal, state, or local laws, rules, or regulations).

Incident Scene- The location of a crime, motor vehicle accident, or custodial arrest, or the location of a vehicle that is a traffic hazard, a recovered stolen vehicle, or an abandoned vehicle.

Nueces County law enforcement agency-initiated, incident-management non-consent tow —any tow of a vehicle that is initiated by a Nueces County law enforcement agency in performance of its duties, where a driver has been arrested, has been involved man accident, or has an otherwise disabled vehicle and fails or refuses to designate a tow-truck company to move the vehicle from public property. (Hereinafter referred to as "incident-management tow").

Nueces County law enforcement agency- includes the Nueces County Sheriffs Office and the five Nueces County Constables' offices.

Sec. 2: Equipment Requirements.

No person may perform an incident-management tow unless the tow truck being used is equipped with all of the following equipment:

- 2.1 Tow trucks shall meet all minimum safety requirements as established by federal, state, and local laws, statutes, regulations, ordinances, or guidelines, including but not limited to the Texas Towing and Booting Act (Tex. Occ. Code Chapter 2308), as applicable, in addition to any particular safety requirement prescribed herein, or that may be prescribed herein in the future;
- 2.2 Brakes that meet braking performance requirements, under all loading conditions, of Texas Transportation Code §547.408, and the applicable Federal Department of Transportation Regulations;
- 2.3 All tow trucks shall operate within applicable recommended towed-vehicle weight limits as defined by the vehicle and/or towing equipment manufacturers. No tow truck shall be permitted to lift more than the factory or manufacturer-established maximum rated capacities;
- 2.4 A power winch, winch line, and boom, with a factory rated lifting capacity of not less than 8,000 lbs., single line capacity or hydraulic and mechanical wheel lift with a lifting capacity of not less than 2,500 lbs.
- 2.5 As minimum standard equipment, each tow truck must carry the following:
 - 2.5.1 A tow sling or hydraulic lift sufficient to prevent swinging of any equipment or vehicle being transported or towed. This requirement is not applicable to a rollback, unless the wheels of the vehicle being towed are in contact with the ground;
 - 2.5.2 For tow trucks of less than 10,000 lbs. GVW-a sufficient number of steel safety chains with at least 5/16" links;

- 2.5.3 For tow trucks with a GVW of 10,000 lbs. or more-a sufficient number of high-test steel safety chains with at least 3/8" links;
 - 2.5.4 For tow trucks with a GVW of 26,000 lbs. or less-at least one filled and readily accessible, 5-lb., type-ABC fire extinguisher that meets current National Fire Protection standards;
 - 2.5.5 For tow trucks with a GVW exceeding 26,000 lbs.-at least one filled and readily accessible, 10-lb., type-ABC fire extinguisher that meets current National Fire Protection standards;
 - 2.5.6 One wedge-head type crowbar or wrecking bar at least 36" in length;
 - 2.5.7 One broom of a type designed for pushing with an 18" broom head;
 - 2.5.8 One 9" or larger, flat-edge shovel;
 - 2.5.9 A box, bucket, or other sturdy container for glass and debris to be removed from an incident scene;
 - 2.5.10 Sufficient rope, wire, tie-downs, etc, for use in securing loose vehicle parts or components;
 - 2.5.11 Emergency lights, either rotator or strobe-type, amber in color, visible from all directions when in operation (red and blue flashing lights are permitted during an operation within an Incident-management scene);
 - 2.5.12 Auxiliary tail and signal lamps with sufficient cable to attach said to the rear of the vehicle being towed, for use in situations where the vehicle being towed obstructs view of the tow truck's standard tail and signal lamps;
- 2.6. No person shall equip a tow truck used to perform an incident management tow under this Order with any device designed to detect or monitor radar, laser, or any other speed-measuring instrument, nor may an incident management tow under this Order be performed using a tow truck so equipped.
- 2.7 All towing companies shall ensure that their tow trucks meet minimum federal, state, and local Laws, statutes, regulations, and/or guidelines, as applicable, regarding required safety equipment (including but not limited to, headlamps, tail lamps, signal lamps, brakes, brake lights, hazard lights, windshield wipers and blades, and tires), and shall ensure that said safety equipment is in proper working order at all times.

Sec. 3: Incident Scene.

The following rules apply to all Nueces County law enforcement agency incident scenes:

- 3.1 Except in the case of an emergency, or at the direction of a Nueces County law enforcement agency officer, a tow truck operator shall park the tow truck at least 200 feet from the incident scene. A tow truck operator may use only beacon lights as required by state law;
- 3.2 A tow truck operator shall park the tow truck on the same side of the roadway as the vehicle to be towed, unless otherwise directed by a law enforcement officer;
- 3.3 Except where removal is not possible or practical (e.g., volume and/or nature of the debris will require separate removal), a tow truck operator responding to an incident scene shall remove all debris from the incident scene and shall properly dispose of the same;
- 3.4 Any tow truck operator soliciting the owner or operator of a vehicle involved in a law enforcement incident shall be permanently removed from the approved list of incident-management tow operators. Tow truck operators shall not enter a law enforcement incident scene, and must return to their vehicle upon arrival of a Nueces County law enforcement agency officer, and until directed to enter the incident scene by the officer;

- 3.5 Unless an agreement is reached between the vehicle owner or operator and the tow truck operator, a motor vehicle towed from a law enforcement-incident scene under this Order shall be taken to a Texas Department of Licensing and Regulation-registered vehicle storage facility located in the specific zone from which the vehicle was towed, and the vehicle owner shall be responsible for any and all storage fees; and
- 3.6 Once a Nueces County law enforcement agency officer initiates a non-consent tow, the services and fees prescribed herein shall apply, regardless of whether the vehicle owner or operator signs any document or ticket regarding the towed/stored vehicle.

Sec. 4: Tow Truck Slip.

At a minimum, a tow truck slip shall contain the following:

- 4.1 A complete description of the motor vehicle to be towed, including the license plate number, the vehicle identification number, and the vehicle weight reported on the vehicle registration and lading documents;
- 4.2 Any visible damage or missing parts to the interior or exterior of the vehicle;
- 4.3 The location from which the vehicle is being towed;
- 4.4 The time when the tow truck operator completes loading of the vehicle;
- 4.5 The reason the vehicle is being towed;
- 4.6 The designated vehicle storage facility, or other location designated by the vehicle owner or operator or the Nueces County law enforcement officer, that the vehicle is being towed to;
- 4.7 The signature and printed name of the tow truck operator performing the tow;
- 4.8 A brief description of the towing services performed at the scene, including whether additional assistance was required for recovery of the vehicle; and
- 4.9 A total of the charges for services performed at the scene.

Sec. 5: Fees for Services.

Any tow truck operator who fails to adhere to the following fee schedule, may be removed from the approved list of incident-management tow truck operators used by Nueces County law enforcement agencies.

5.1 Maximum Allowable Incident-Management Towing Fees (Category A, Regular or Flatbed Tow trucks):

5.1.1	Incident-management tow (includes double hook-up and towing of truck and trailer as one (I) unit	\$175.00
5.1.2	Total maximum, inclusive with 5.1.1, towing fee if the use of dollies and additional labor	\$300.00
5.1.3	Tire change (in lieu of dollies or similar equipment) 1 tire \$25.00, 2 or more tires	\$ 40.00
5.1.4	Additional/special labor (e.g., winching to remove a vehicle from embankment, water, etc., righting an over-turned vehicle, or other similar unusual circumstances) All inclusive fee per hour	\$ 45.00
5.1.5	Distance fee (cost/mile for every mile in excess of 25 miles from yard)	\$ 3.25
5.1.6	Additional fee for each half-hour or portion thereof at the scene in excess of one-half hour not caused by delay on the part of the operator	\$ 40.00
5.1.7	Four-wheel drive remote beach/off-road tows only	\$ 75.00
5.1.8	Drop fee	\$ 50.00

5.2 Maximum Allowable Incident-Management Towing Fees (Category B Heavy-duty or Large Tow Trucks):

5.2.1	Incident-management tow(Includes double hookup and towing of tractor and trailer as one (1) unit, removal of shaft or axle, application of air to brake system, and/or caging brakes, to prepare for tow)	\$475.00
5.2.2	Working time (e.g., winching to remove a vehicle from embankment, water, etc., righting an overturned vehicle, assisting with clean up, loading or unloading the vehicle, or other similar work) All inclusive fee, per hour	375.00
5.2.3	Delay fee (assessed for each half hour tow truck is delayed at scene after time vehicle is loaded, when delay is NOT caused by tow truck operator) per half-hour	\$ 40.00
5.2.4	Distance fee (cost/mile for every mile in excess of 25 miles from yard)	\$ 12.50
5.2.5	Special Costs (cost for obtaining any specialized equipment, e.g.. crane, backhoe, tractor, fork lift, etc.).....actual cost + 25%	mark up

5.3 When a vehicle and trailer are both towed by one (I) auto wrecker, only one (I) towing fee shall be paid by the owner. If the vehicle and trailer are too large or too heavy to be safely towed by a single wrecker, another wrecker may be used and an additional fee charged.

5.4 When more than one (I) vehicle is transported by one (I) auto wrecker. e.g., motorcycles or Parts of vehicles, only one (I) towing fee shall be paid by the owner.

5.5 "Price-per-pound" methods shall not be used to calculate towing fees under this Order.

5.6 The fees established in this section are subject to change as may be required, and shall be reviewed and amended from time to time at the discretion of the County.

Sec. 6: Storage Facility Requirements/Disposition of Abandoned Vehicles.

6.1 In order to be placed on the approved list of incident-management tow truck operators, the storage facility or facilities to be used by the tow truck company must be registered with the Texas Department of Licensing and Regulation;

6.2 All vehicles towed and stored under this Order shall be disposed of pursuant to Texas Transportation Code §683.03 1.

6.3 All required notices to law enforcement related to abandoned vehicles shall be made to:

Texas Auto Title & Registration Consultants, Inc.
P.O. Box 18717 Corpus Christi, Texas 78480
Tel: 1-800-448-2344
Fax: 1-361-939-7620

Sec. 7: General Provisions.

7.1 The tow truck company shall maintain 24-hour wrecker service, and shall have an employee available 24-hours per day, 7-days per week, to answer calls and release stored vehicles;

7.2 Tow truck companies and tow truck operators will abide by all applicable federal, state, and local laws, ordinances, orders, or regulations, including but not limited to traffic rules, while acting as an independent contractor, as detailed below, in responding to a call from a Nueces County law enforcement agency;

7.3 A tow truck company that cannot respond to an incident-management call from a Nueces County law enforcement agency shall immediately inform or notify the law enforcement agency. A tow truck company that cannot respond to an incident-management call from a Nueces County law enforcement agency, shall not send another tow truck company in substitute. A tow truck company that cannot respond to an incident-management

- call from a Nueces County law enforcement agency shall be placed at the bottom of the rotation of the approved list;
- 7.4 Recovery of an abandoned vehicle that turns out not to be salvageable will, nonetheless, be considered a "rotation call;"
- 7.5 A tow truck company responding to an incident management call from a Nueces County law enforcement agency, but that is subsequently dismissed by the officer without performing a tow, will be placed back at the top of the rotation of the approved list;
- 7.6 Upon request of an individual demonstrating ownership or right to possession of a vehicle, a vehicle storage facility shall give that individual access to a vehicle in the facility and allow removal **of any personal property** left in the towed vehicle, unless otherwise indicated by a law enforcement officer. All such personal property must be surrendered to the property owner regardless of whether or not any or all fees associated with the towing or storage of the vehicle have been paid. "Personal property" for purposes of this section refers to property in the vehicle which is not permanently affixed to the vehicle. The vehicle storage facility must request a receipt from the person to whom the personal property is released for any such property removed from the stored vehicle.
- 7.7 A tow truck company that fails, without justification acceptable to the law enforcement agency, to respond to a call with the appropriate and properly equipped tow truck within a reasonable time period, shall forfeit the call to the next tow truck company on the rotation list. A "reasonable time period" to respond to a call is within 30 minutes from the time the call was received. A tow truck company that fails to respond to a call as required by the terms of this Order, and without justification acceptable to the law enforcement agency, to two successive rotation list calls within a 6 month period, may be excluded from the rotation list for a period of 30 days, beginning on the date of the latest failure. A tow truck company that is excluded from the rotation list twice in a 12-month period, may be excluded from the rotation list for a period of 6 months, beginning on the date of the latest failure.
- 7.8 A tow truck company performing an incident-management tow of a vehicle under this Order shall immediately release said vehicle to the owner of the vehicle upon payment of the applicable and appropriate fees as established herein;
- 7.9 Nueces County, or any Nueces County law enforcement agency, officer, agent, representative, or employee shall not be liable for loss of: or damage to, a towed vehicle and/or its contents. All such claims shall be the responsibility of the tow truck company that performed the towing and storage services;
- 7.10 A tow truck company, its agents, officers, subcontractors, employees, and any other person acting on behalf of a tow truck company, performing incident-management towing under this Order is an independent contractor, and is not an agent, officer, employee, or subcontractor of Nueces County or any Nueces County law enforcement agency. Nothing in this Order shall be considered to authorize a tow truck company to exercise any rights or powers that may be vested in Nueces County or a Nueces County law enforcement agency. Under no circumstances shall the provisions of this Order be construed or considered to create an employer-employee relationship or joint venture between a tow truck company and Nueces County or any Nueces County law enforcement agency. A tow truck company, its agents, officers, subcontractors, employees, and any other person acting on behalf of a tow truck company, performing incident-management towing under this Order shall represent and conduct themselves as an independent contractor, and shall not represent, or cause anyone else to believe, that they are Nueces County employees;
- 7.11 A tow truck company performing work and providing services hereunder shall be responsible to Nueces County or a Nueces County law enforcement agency only as required herein. A tow truck company performing work and providing services hereunder shall not be subject to control by Nueces County or a Nueces County law enforcement agency, and shall determine for itself the methods, details, manners, and means of performing its work and providing services.