

ORDINANCE 35-2002

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 176 OF THE BOROUGH CODE ENTITLED "TOWING AND STORAGE"

WHEREAS, the Borough Chief of Police has recommended that Chapter 176 of the Borough Code be amended;

WHEREAS, the Borough Council agrees with this recommendation.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, in the County of Morris and State of New Jersey as follows:

SECTION 1: Section 176 of the Borough Code entitled "**Towing and Storage**" is hereby amended as follows:

§ 176-1. Purpose.

The purpose of this chapter is to provide for the nondiscriminatory and nonexclusionary regulation of local towing and storage operators engaged in the business of removing and storing motor vehicles, pursuant to N.J.S.A. 40:48-2.49.

§ 176-2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings:

ADMINISTRATIVE FEE -- shall mean a one (1) time charge per vehicle for the purpose of compensating the Borough of Madison for the preparation of the regulating and administrating the towing files and documentation and impounding of vehicles in the Borough of Madison.

AUTOMOBILE -- A private passenger automobile, station wagon, van, sport utility vehicle or pickup truck.

BASIC TOWING SERVICE -- The removal and transportation of an automobile from a highway, street or other public or private road or a parking area or from a storage facility, and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm or from being impaled upon any other object within the right-of-way or berm.

DAYTIME HOURS – From 8:00 a.m. until 4:00 p.m., prevailing time, Monday through Friday.

IMPOUNDED FOR INVESTIGATION-- any vehicle that is impounded for a official police investigation and processing will be towed at owner's expense directly to the Madison Police impound yard unless otherwise directed by the officer in charge. The vehicle will remain until the investigation is completed by the Madison Police Department and storage fees have been paid.

INSIDE BUILDING -- A vehicle storage facility that is completely indoors, having one or more openings in the walls for storage and removal of vehicles and that is secured by a locking device on each opening.

MOTOR VEHICLE ACCIDENT -- An occurrence in which an automobile comes in contact with any other object for which the automobile must be towed or removed for placement in a storage facility. This includes all situations which are accidental as to the insured even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the insured or not otherwise involved with the insured.

NIGHTTIME HOURS -- From 4:00 p.m. until 8:00 a.m., prevailing time, and all day Saturday and Sunday.

OUTSIDE SECURED -- An automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier that is at least six feet high and is installed with a passive alarm system or a similar on-site security measure. The facility is to be lighted at night.

OUTSIDE UNSECURED -- An automobile storage facility that is not indoors and is not secured by a fence, wall or other man-made barrier, and all other storage facilities not defined above as inside building or outside secured.

ROAD SERVICE-- assisting a motor vehicle, without towing or hookup. Service such as providing fuel (plus cost of fuel), jump start, change flat tire (with available spare), simple opening of vehicle lockout, etc.

TOW VEHICLE -- Only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by its manufacturer for the removal or transport of private passenger automobiles.

TOW VEHICLE'S BASE OF SERVICE -- The towing operator's principal place of business where the tow vehicle is stationed when not in use.

TRUCK -- Any motor vehicle other than an automobile as defined above and which requires heavy-duty towing. Medium Duty: 10,001 - 26,000 pounds GVW. Heavy Duty: 26,001 pounds GVW and up.

WINCHING -- Moving a vehicle by use of the cable or winch from a position that is not accessible for direct hookup by conventional means of loading onto a tow vehicle. It shall not include pulling a motor vehicle onto a tilt bed or car carrier or lifting a vehicle with a conventional tow sling.

YARD TOW -- The removal of the vehicle from the towing operator's storage yard for the benefit of another towing operator who is taking the vehicle from the storage site and whose tow vehicle is physically unable to gain access to the vehicle while it is inside the storage yard.

§ 176-3. Towing regulations.

A. Removal of motor vehicles. Whenever a police officer orders the removal of automobiles from private or public property, the officer shall utilize the rotation lists established in §176-3C of this chapter.

B. An Officer may allow the driver of a vehicle involved in a motor vehicle crash or a disabled motor vehicle to arrange for their own selection of a wrecker to tow said vehicle, provided that such a request does not impair traffic and will not require the officer to remain at the scene after his normal responsibility is concluded.

C. Towing operators. Every three years the Borough Council shall establish by resolution a list of licensed towing operators pursuant to § 176-7 to be utilized by the Police Department on a rotating basis. Such list shall be utilized by members of the Police Department on a nondiscriminatory basis. Only those towing operators who meet the minimum standards of operator performance set forth in this chapter shall be included on such list. The list may be modified by Council at any time.

(1) Application. Each owner of a towing service that applies to be a towing operator for the Police Department must execute the Authorization by Subject of Request and Privacy Act Notification area of Form SBI-212A and SBI-212B (Request for Criminal History Record Information for a Non-Criminal Justice Purpose) and submit to a criminal background investigation pursuant to N.J.S.A. 53:1-20.5 et seq. This investigation shall include disclosure of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed. Additionally, the Chief of Police shall also cause the applicant to be fingerprinted for the purpose of a criminal history check. All applicants must submit a cashier's check, certified check or money order drawn on a United States bank in the

amount of \$49, payable to the Division of State Police – BSI for the criminal history search. If the applicant is a corporation, then this requirement shall apply to the officers of the corporation. This investigation shall also apply to any and all personnel who operate towing equipment for the owner of the towing service, if that person is engaged to provide service as requested by Madison Borough. As a result of such investigation, the Chief of Police shall note, in writing, his recommendation and his reasons therefore to the Borough Clerk. The Borough Clerk shall present the completed application, along with the recommendation from the Chief of Police as to whether the application shall issue, at the next regularly scheduled public meeting. If the Borough Council so directs, the Borough Clerk shall approve the application.

(2) Equipment. All towing operators shall meet the following requirements:

(a) For classification as an automobile towing service, the operator must possess one flatbed-style tow vehicle and one hoist-type tow vehicle with a sling and wheel lift.

(b) For classification as a truck towing service, the operator must have one heavy-duty tow vehicle capable of towing a fully loaded tractor-trailer weighing 80,000 pounds.

(c) All tow vehicles must carry the following equipment:

- [1] Shovel.
- [2] Fire extinguisher.
- [3] Jumper cables.
- [4] Tire changing equipment and portable air tank.
- [5] Jack and hammer.
- [6] Pry bar or similar tool.
- [7] Speedy Dry or similar liquid absorbent and disposal container.
- [8] Push broom.
- [9] Two-way radio communication system or cellular telephone.
- [10] Hazmat clean up kit

(d) All towing vehicles must have amber emergency warning lights mounted on the vehicle so as to warn approaching traffic of their presence. The size and location of these lights must conform to New Jersey Division of Motor Vehicle standards. The operator must have an amber light permit.

(e) All towing vehicles must carry a copy of the rate schedule established by Madison Borough. Said schedule must also be displayed in a conspicuous manner at the operator's place of business.

(3) Facilities. Each operator must have a storage lot and place of business within Madison Borough, or within a 2-mile radius of the Madison Borough Corporate Limits. The towing business and storage lot must comply with all zoning ordinances and regulations in the municipality in which they are located.

(4) Availability and response time. Each operator must be available 24 hours a day, seven days a week, and must respond within 20 minutes during daytime hours and 30 minutes during nighttime hours of the original telephone call request by the Police Department.

§ 176-4. License fees, terms.

A. The length of the license shall be for a three-year period. Each year shall require passage of background check, by owners and employees.

B. The license shall not be transferable to another owner without approval of the Borough of Madison and posting of proper fee.

C. The Borough Council shall set the fees for the three year period for towing and storage. This license will take effect January 1, 2003.

D. The application fee will be \$500 dollars for the three year term of the license.

E. All complaints referring to towing service shall be directed to the Police Department by the applicant and/or his/her employees.

F. It is the responsibility of the applicant to notify the Borough of Madison at once upon cancellation of business insurance.

G. The Borough of Madison shall not be responsible for insurance coverage to the Applicant.

§ 176-5. Insurance.

A. The applicant shall provide insurance by a state approved licensed carrier and must indemnify the Borough of Madison.

B. The applicant shall maintain insurance coverage as set forth herein during the entire length of the towing contract.

C. The applicant shall provide a certificate of insurance indicating the applicant has the minimum coverage of insurance as follows:

(1) Automobile liability in an amount not less than \$1,000,000 combined single limit.

(2) Workers compensation for all employees.

(3) Garage keepers liability in an amount not less than \$60,000 per location.

(4) Garage liability in an amount not less than \$1,000,000 combined single limit.

(5) Comprehensive general liability to provide complete protection to the borough against any and all risks of loss or liability.

(6) Policies endorsed to provide collision coverage for vehicles, in tow.

(7) The Borough shall be named as an additional insured.

(8) Theft insurance on stored vehicles.

D. The applicant shall also provide the Borough of Madison with a hold harmless agreement, in a form satisfactory to the Borough Attorney.

§ 176-6. Fees established.

A. Automobiles and motorcycles. The fee schedule for towing services, storage and administrative services shall be established by the Borough Council by resolution.

B. Trucks. The fee schedule for towing services and storage shall be established by the Borough Council by resolution.

C. Inclement Weather Conditions. The towing operator may, during inclement weather conditions, such as but not limited to: Snow Storm, Ice Storm, Black Ice conditions, Flooding, or during a State of Emergency, charge an extra twenty percent (20%) of the final invoice (if towed under normal conditions) for towing services provided. (See Fee Schedule).

D. Use of a Hazmat kit by license tower associated with the clean up of fluid spills is \$75 dollars per kit

§ 176-7. Issuance of Towing Operator Licenses.

The Borough Council shall by public resolution authorize the issuance of towing operator licenses after consideration of the applications submitted in conformity with this chapter.

§ 176-8. Regulations for towing service operators.

A. Release of impounded vehicles. No impounded vehicle is to be released without proper authorization from the Police Department. Vehicle release arrangements must be available from the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, 8:00 a.m. to 12:00 noon Saturday

(excluding New Jersey State Holidays). The owner of the vehicle (or his designee) shall provide a "Paid" receipt from the towing operator, and then respond to the Madison Borough Police Department to arrange for the release of his/her vehicle from the police impound yard, or towing operator's facility, as may be the case. An invoice for the towing service provided, (when a vehicle is towed to the police impound yard) will be left with the vehicle, as well as the keys for said vehicle. The police department will retain custody of both the invoice and keys for all vehicles towed to the police impound yard. All transactions of this type will be recorded in a log book, and the principal of the towing establishment will be required to sign the log book to acknowledge receipt of said payment. The hours for release of the impounded vehicle shall be Monday through Friday 8:00 a.m. through 5:00 p.m. and 8:00 a.m. through 1:00 p.m. on Saturday. Appointment for release of the vehicle shall be made through the Shift Supervisor, who shall be responsible to ensure that all laws and procedures concerning the release of vehicles are followed. The Borough shall supply junk titles or good titles for abandoned vehicles in accordance with the provisions of N.J.S.A. 39:10.1 et seq., for vehicles unclaimed over 30 days. The Borough shall compensate the towing service for the towing bill for such vehicles unclaimed for over 30 days, for vehicles stored in the Police Impound yard. A junk title shall be applied for, and the towing invoice paid after the Borough recovers the value of the vehicle. For any vehicles that are towed and stored by the towing operator, the Borough shall apply for a junk title, and compensate the towing operator for towing fees and storage, up to the limit of the value of said vehicle.

B. Insurance; indemnity.

(1) Each operator on the approved lists shall furnish the Borough Clerk with a certificate of insurance from an insurance company satisfactory to the Borough. Each certificate of insurance shall identify the coverage provided and shall provide that such insurance shall not be changed or canceled without giving 10 days prior written notice to the Borough by certified mail, return receipt requested. Specific reference to the rotating lists of towing operators shall be made on all policies of insurance.

(2) The applicant shall provide the minimum coverage of insurance as defined in §176-5(c).

(3) Each operator shall also provide the Borough of Madison with a hold harmless agreement to indemnify and save the Borough harmless from all damages and claims for damages which may be made by any person for bodily injury or property damages resulting from the operator's performance.

(4) Each operator shall have an "on-hook vehicle" rider on their towing insurance policy. This rider will provide insurance should the towed vehicle become uncoupled from the tow truck during towing operations.

(5) The applicant shall maintain insurance for the entire length of the towing contract, and provide certificate of insurance on an annual basis to the Borough Clerk.

C. Enforcement. The Police Department is designated to enforce the provisions of this chapter in accordance with due process of law. In carrying out the provisions of this chapter, the Police

Chief is hereby authorized to adopt additional reasonable regulations, which are not inconsistent with this chapter.

D. Abandoned or unclaimed vehicles.

(1) Any vehicle which is not claimed by the owner within thirty days of impoundment shall be reported by the operator storing the vehicle to the Police Department, pursuant to N.J.S.A. 39:10A-1 through 39:10A-7.

(2) After expiration of the thirty-day period, the Police Department shall make application for title to the Division of Motor Vehicles as per standing general orders. Vehicles that remain unclaimed after all requirements of the general orders are met shall be auctioned off to recover towing costs, pursuant to N.J.S.A. 39: 10A-1 through 39:10A-7.

(3) Any operator found to be disposing of vehicles in violation of this procedure will be charged with misapplication of entrusted property (N.J.S.A. 2C:21-15) and will be prohibited from providing service to Madison Borough.

E. Rights of owners.

(1) The owner of any vehicle towed shall have the right to remove property belonging to him or her from the stored vehicle unless a "police hold" is marked on the towing form.

(2) The vehicle owner or his or her representative shall have the right to take photographs of stored vehicles.

F. Public inspection. This chapter, all regulations adopted by the Police Chief and the fee schedules of individual tow operators, shall be available to the public during normal business hours.

G. Operator dealings with public.

(1) The operator shall always act in a professional manner and at all times be courteous and respectful toward members of the public, as well as representatives of the Borough of Madison. If members of the public, especially those whose cars may have been towed or impounded, resort to strong language, threats and unbecoming behavior toward the operator, the operator is expected to exercise restraint and not to respond in kind and thereby reflect unfavorably on the Borough of Madison and/or the Police Department.

(2) Repeated reports of discourteous behavior by the operator, which can be substantiated and documented, may be considered by the Borough as sufficient cause for removal of the operator from the rotational list of automobile towing operators and truck towing operators as established consistent with § 176-3C.

H. Removal of towed vehicles; Location for storage.

(1) A vehicle that is removed by a towing company under this ordinance, in which the Police Department has a duty to impound said vehicle for investigative or security reasons, shall be towed to the Police Department impound yard and stored there, until all investigations are completed and/or proper paperwork to support the release of the motor vehicle back to the owner or his designee are presented for police department approval.

(2) A vehicle that is removed by a towing company that the Police Department has no interest in (i.e. disabled motor vehicle or one that is involved in a crash without further police department investigation required) may be towed back to the towing operator's facility, or to a location of the vehicle owner's choice, provided the towing operator is in a position to comply with such a request.

§ 176-9. Violations and penalties.

A. Complaint and hearing. The governing body shall have the right to suspend or revoke any towing privileges issued pursuant to this section for good cause upon written complaint of the Police Chief. In the event that a towing operator fails or refuses to follow call out schedule or refuses to retain the proper equipment, personnel or facilities necessary to perform the services required for towing operators, or that the services performed are not satisfactory or violate any provision of this section, rule or regulation duly adopted, the Police Chief shall file a written complaint with the governing body that there is probable cause for revocation or suspension. Written notice of such complaint and the basis of the complaint shall be given to the towing operator and said operator shall be entitled to a hearing before the governing body prior to final determination of the complaint by the governing body.

B. Penalties.

(1) Any operator who violates any section of this chapter, in addition to any other penalties provided by law, shall be subject to suspension of towing privileges for one month for a first offense, three months for a second offense and six months for a third offense. If the operator commits a fourth offense, its right to provide towing services to the Borough shall be permanently revoked, and the towing operator shall be removed from the list of approved operators.

(2) Any operator who violates the operator rate schedule shall receive a fine of \$250 and suspension of towing privileges for one month. A second violation will result in a fine of \$400 and suspension of towing privileges for six months. A third violation will result in a fine of \$500 and permanent revocation of towing privileges.

(3) In all cases, if an operator overcharges a vehicle owner, the excess moneys paid shall be returned by the operator to the owner within 10 business days.

(4) A towing operator may be removed from the list adopted pursuant to § 176-3C, by resolution of the Borough Council, if its performance is determined to be unreliable or inadequate. If there is a breach of any of the provisions of this chapter or applicable regulations, an operator may be removed from the list by the Chief of Police pending action by the Borough Council.

(5) Violators who are licensed as an automobile repair facility will be reported to the Division of Motor Vehicles. Insurers may also report violators under the provisions of N.J.S.A. 17:23-8 to N.J.S.A. 17:23-15.

§ 176-10. Towing, Storage Fees.

A. The following is the fee schedule for towing services:

(1) Days:

(a) Eighty-five dollars, except for towing commencing on Route 24.

(b) All towing of vehicles commencing on Route 24 shall be \$1.75 per mile, round trip.

(2) Nights, weekends and New Jersey State holidays:

(a) Eighty-five dollars, except for towing commencing on Route 24.

(b) All towing of vehicles commencing on Route 24 shall be \$1.75 per mile, round trip.

B. The following is the fee schedule for storage services:

(1) Inside secured: \$35 per day or portion thereof.

(2) Outside secured: \$35 per day or portion thereof.

(3) Outside unsecured: \$25 per day or portion thereof.

C. The following is the schedule for road service other than towing:

(1) Days: \$35.

(2) Nights: \$45.

D. Call out charges.

(1) The minimum charge for call out charges shall be \$35, which shall be paid by the vehicle owner.

(2) If the Madison Police call out a duty wrecker for accident or impound, and the vehicle has no value (salvage), and the owner fails to respond for payment, then the Borough of Madison will obtain title to the vehicle for salvage. The towing company will absorb the storage charge until the vehicle title is conveyed to the towing company by the Borough of Madison to discard the vehicle.

(3) Administrative charges: \$35 per towing event.

§ 176-11. General provisions.

A. The Borough of Madison assumes no liability in collecting of bills for towing services.

B. The applicant shall keep records of all towing for a period of three years or each year of contract, if not renewed, as to who was towed, vehicle plate number, vehicle identification number, location of event, amount charged and date and time of call.

C. The applicant shall not use a satellite storage yard not named in the application.

D. The applicant shall not impose any penalty on a customer for service during normal working hours relating to pickup of vehicle left for safekeeping.

E. The applicant shall be responsible for the conduct of his/her employees. The borough accepts no responsibility for their actions, nor are they agents of the borough.

F. The schedule for towing and storage fees shall be in accordance with this chapter pursuant to N.J.S.A. 40:48-2.49.

G. The need/calling out of heavy-duty wrecker and vehicles exceeding five tons shall be the responsibility of the designated emergency personnel at the scene, taking into account public safety, response time and any other existing factors that might have arisen. The applicant may or may not have this service available. If so, they shall be given priority over outside vendors.

H. The Borough of Madison shall keep and maintain a separate rotating list of towing contractors for the towing of abandoned or junk vehicles. The collection of fees for towing these vehicles shall be the sole responsibility of the towing contractor. The Borough of Madison shall not be liable for these towing fees.

I. The Borough of Madison assumes no responsibility for the storage of abandoned vehicles taken in for safekeeping. The Police Department shall assist the applicant in title research for proper destruction of said vehicles.

J. These regulations as well as related fee schedules are available to the public during normal business hours at Borough Hall.

K. The Chief of Police is the municipal officer or agency appointed to enforce the provisions of this chapter in accordance with due process of law required by N.J.S.A. 40:48-2.49(c).

SECTION 2: This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

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Attest: JOHN J. DUNNE, Mayor

MARILYN SCHAEFER, Borough Clerk