
Staff Summary Report

Council Meeting Date: 05/28/09

Agenda Item Number: _____

SUBJECT: This is the second public hearing to amend Chapter 32 of the Tempe City Code relating to Towing from Private Property by amending Sections 32-1, 32-2, 32-4, 32-5 and 32-6 and adding new Section 32-9.

DOCUMENT NAME: 20090528pdsam02 **TCC CH 32 – TOWING (0503-32)**
ORDINANCE NO. 2009.11

SUPPORTING DOCS: No

COMMENTS: This ordinance will change the Tempe City Code relating to changes in policies and procedures regarding the release of vehicles and signage required by towing companies.

PREPARED BY: Shelly A. Macdonald, Management Assistant II **EXT.** 8820

LEGAL REVIEW BY: Bill Amato, Police Legal Advisor **EXT.** 8610

DEPARTMENT APPROVAL: Tom Ryff, Chief of Police **EXT.** 8214

FISCAL NOTE: N/A

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2009.11.

ADDITIONAL INFO: N/A

ORDINANCE NO. 2009.11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 32, TEMPE CITY CODE, RELATING TO TOWING FROM PRIVATE PROPERTY BY AMENDING SECTIONS 32-1, 32-2, 32-4, 32-5 AND 32-6; AND ADDING NEW SECTION 32-9 RELATING TO APPLICATION OF LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 32-1 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-1. Definition.

For the purposes of this chapter, "private towing carrier" means any person who commercially offers services to tow, transport, IMMOBILIZE or impound motor vehicles from private property without the prior permission of the owner or operator of such vehicle by means or use of a truck or other vehicle OR DEVICE designed for or adopted to that purpose.

Section 2. That Section 32-2 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-2. Maximum charges and fees; release of vehicles.

(a) No private towing carrier shall hold or attempt to hold any vehicle towed from any location within the city without the consent of the owner or operator thereof as security for accrued towing and storage charges. Any such vehicle shall be immediately released, regardless of impound location, to the owner or operator thereof upon the production of proof of ownership or agency, as hereinafter defined.

(b) For the purposes of subsection (a), proof of ownership or agency shall be deemed proven when the claimant displays an actual or photocopy of a vehicle registration or title, whether current or not, OR A CURRENT RENTAL OR LEASE AGREEMENT for the impounded vehicle and one of the following is provided:

- (1) The claimant of the vehicle displays a driver's license or any government piece of photographic identification, whether current or not, issued by any state or other sovereign empowered to issue such a license or identification, such

license indicating the same last name as that in which the vehicle is registered;
or

- (2) The claimant displays any piece of photographic identification ~~and written authorization from the owner, which includes a copy of any government piece of photographic~~ ISSUED BY ANY STATE OR OTHER SOVEREIGN EMPOWERED TO ISSUE SUCH A LICENSE OR identification ~~of the owner~~ and the keys to the impounded vehicle.

(C) THE PRIVATE TOWING CARRIER, ITS AGENTS AND EMPLOYEES SHALL ALLOW THE CLAIMANT IMMEDIATELY UPON REQUEST TO RETRIEVE ANY OF THE DOCUMENTATION LISTED IN SUBSECTION (B) FROM THE IMPOUNDED VEHICLE.

(e D) Pursuant to A.R.S. § 9-499.05 and this chapter, private towing carriers within this city shall be subject to such maximum charges and fees as the council shall establish by resolution (see Appendix A) at least every five (5) years. A private towing carrier is subject to such maximum charges and fees and other regulations established in this section if the vehicle being towed, transported, IMMOBILIZED or impounded is towed from private property located within the corporate limits of this city. NO FEES OTHER THAN THOSE SPECIFIED IN APPENDIX A SHALL BE PERMITTED.

(d E) A private towing carrier may require a claimant to provide a current address and telephone number to assist such private towing carrier's billing and collection process. A PRIVATE TOWING CARRIER SHALL PROVIDE THE CLAIMANT WITH INFORMATION SHOWING THE PRIVATE TOWING CARRIER'S BILLING AND COLLECTION PROCEDURES. THIS DOCUMENT SHALL CONTAIN NO PROMISSORY NOTE LANGUAGE. No private towing carrier may require as a condition precedent to the release of any vehicle documentation or proof in excess of or different than that described in subsections (b) and ~~(e)~~ (F) of this section.

(e F) A private towing carrier ~~shall~~ MAY require any claimant to sign a receipt for the vehicle claimed; however, such receipt shall contain no language other than the following:

- (1) The name and address of the claimant;
- (2) The name, address and letterhead of the private towing carrier;
- (3) The date and time at which the vehicle was claimed;
- (4) A description, including the license number, of the claimed vehicle; and
- (5) A statement of the unpaid balance, if any.

~~(f) A private towing carrier shall provide the claimant with a copy of the receipt and the private towing carrier's billing and collection procedures.~~

(g) Notwithstanding any of the foregoing provisions, no private towing carrier shall release any vehicle after having been advised by any law enforcement agency that such vehicle has been reported as stolen.

(H) A PRIVATE TOWING CARRIER SHALL RELEASE AN IMPOUNDED VEHICLE FROM THE LOCATION WHERE THE CLAIMANT IS DIRECTED BY SIGNS, PURSUANT TO SECTION 32-6, TO RETRIEVE THE VEHICLE. THE VEHICLE SHALL BE RELEASED AT (1) THE TIME THE TOWING AND IMPOUND FEE IS PAID OR (2) PROOF OF OWNERSHIP IS PROVIDED PURSUANT TO SUBSECTION (A). A PRIVATE TOWING CARRIER SHALL BE DEEMED TO BE OPERATING BUSINESS AND REQUIRED TO RELEASE VEHICLES IF THEY ARE TOWING OR IMPOUNDING VEHICLES.

(I) THE PRIVATE TOWING CARRIER SHALL POST A SIGN WITH A MINIMUM ONE INCH LETTERING WITH THE MAXIMUM CHARGES AND FEES AS ESTABLISHED BY COUNCIL RESOLUTION (SEE APPENDIX A) AT THE MAIN BUSINESS ENTRY OF THE IMPOUND LOCATION.

(J) A PRIVATE TOWING CARRIER SHALL POST SIGNS VISIBLE TO CUSTOMERS AT THE LOCATION OF PAYMENT NO SMALLER THAN TWELVE (12) INCHES BY EIGHTEEN (18) INCHES AT THEIR PLACE OF BUSINESS WITH THE FOLLOWING INFORMATION:

- (1) TEMPE CITY CODE SECTIONS 32-1 THROUGH 32-9;
- (2) A LIST OF SPECIFIC FEES AUTHORIZED BY TEMPE CITY CODE, INCLUDING TOWING FEES, STORAGE FEES AND ANY OTHER CHARGES THAT COULD RESULT FROM THE DISPOSITION OF THE VEHICLE; AND
- (3) NAME OF PRIVATE TOWING CARRIER, RESPONSIBLE PARTY AND BUSINESS TELEPHONE NUMBER.

(K) A PRIVATE TOWING CARRIER SHALL ACCEPT CREDIT AND DEBIT CARD PAYMENTS FOR ALL LISTED FEES. THERE SHALL BE NO ADDITIONAL CHARGES FOR SUCH PAYMENT METHODS.

Section 3. That Section 32-4 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-4. Notice to police.

No private towing carrier shall tow, IMMOBILIZE or transport any vehicle without the express permission of the owner thereof, unless the private towing carrier has notified the city

police department ~~within one hour after~~ PRIOR TO towing, IMMOBILIZING or transporting the vehicle and provided the following information:

- (1) The name and address of the owner of the vehicle, if known;
- (2) The vehicle license number, vehicle identification number (VIN) and description;
- (3) The reason the vehicle was moved OR IMMOBILIZED without the owner's permission;
- (4) The location where the vehicle was IMMOBILIZED OR taken; and
- (5) The name, ~~and address~~ AND DRIVERS LICENSE NUMBER of the person ~~or~~ THAT TOWED OR IMMOBILIZED THE VEHICLE AND THE NAME AND ADDRESS OF THE company that towed, IMMOBILIZED or transported the vehicle.

Section 4. That Section 32-5 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-5. Authority to tow.

(A) It shall be unlawful for a private towing carrier to tow or transport a motor vehicle from private property OR IMMOBILIZE A VEHICLE ON PRIVATE PROPERTY without the permission of the owner or operator of the vehicle unless such private towing carrier receives a request from a law enforcement agency or the express written permission from the owner of the property or the agent of the owner, who has complied with requirements of this section. The owner or the owner's agent shall either sign each towing order or authorize the tow by a written contract which is valid for a specific length of time NOT TO EXCEED ONE YEAR. The private towing carrier may not act as the agent of the owner. A copy of the written contract shall be made readily available to the law enforcement agency upon request and include the owner's or owner's agent name and current telephone numbers.

(B) A PRIVATE TOWING CARRIER SHALL ONLY BE AUTHORIZED TO TOW OR TRANSPORT A MOTOR VEHICLE FROM THE TOW LOCATION TO THE CARRIER'S DESIGNATED LOT.

Section 5. That Section 32-6 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-6. Notice to public of right to tow.

(a) The owner or person in possession of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this section which are clearly visible and readable from a ~~distance of fifty (50) feet away~~ ANY POINT WITHIN THE PARKING AREA and at all points of entry. The owner of a subdivision or area containing private streets may

prohibit parking on one or both sides of the street if signs as prescribed by this section are posted at each entrance to the subdivision or area and near every intersecting street at a location where the sign is visible and readable upon entry to any such street from the intersecting street. Such signs shall contain, at a minimum, the following information:

- (1) Restrictions on parking;
- (2) Disposition of vehicles found in violation of parking restrictions;
- (3) Maximum cost to the violator, including storage fees and any other charges that could result from the disposition of his vehicle parked in violation of parking restrictions;
- (4) Telephone number and address where the violator can locate RETRIEVE his vehicle; and
- (5) Each sign shall state, "Tempe City Code, Section 32-6."

(b) Signs AT THE ENTRANCE OF THE PARKING AREA will be a minimum of twelve (12) inches by eighteen (18) inches in size and will be mounted at a minimum height of ~~five (5)~~ THREE (3) feet and a maximum height of ten (10) feet above the ground. SIGNS WITHIN THE PARKING AREA WILL BE A MINIMUM OF SIX (6) INCHES BY NINE (9) INCHES IN SIZE AND MUST BE VISIBLE FROM ANY LOCATION WITHIN THE PARKING AREA. ALL SIGNS PURSUANT TO THIS SUBSECTION SHALL CONSIST OF A WHITE BACKGROUND WITH RED LETTERING.

(c) No private towing carrier shall tow a vehicle from a private parking area OR IMMOBILIZE THE VEHICLE unless the signs CONFORM WITH AND are posted as required by this section ~~and conform with subsections (a), (b) and (e).~~

(d) This section shall not apply to any vehicle left in a private parking area for over seventy-two (72) consecutive hours. The owner or person in possession of any private parking area in which a vehicle has been left for over seventy-two (72) consecutive hours shall comply with § 32-4 provisions of this chapter before towing OR IMMOBILIZING such vehicle.

~~(e) The private towing carrier shall post a sign with a minimum one inch lettering with the maximum charges and fees as established by council resolution (see Appendix A) at the main business entry of the impound location.~~

Section 6. That Chapter 32 of the Tempe City Code is hereby amended by adding new Section 32-9 entitled "Application of Law" and renumbering Section 32-9 entitled "Violation; Penalties" to Section 32-10.

SEC. 32-9. APPLICATION OF LAW.

A PRIVATE TOWING CARRIER IS SUBJECT TO THE PROVISIONS OF THIS CHAPTER IF IT TOWS, IMMOBILIZES OR TRANSPORTS A VEHICLE WITHIN THE CITY LIMITS REGARDLESS OF THE IMPOUND LOCATION.

Section 7. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____day of _____, 2009.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney