

COUNCIL PENDING ORDINANCE 2022-109
ORDINANCE NO. _____
AS AMENDED 12-5-22
CERTIFICATION DATE _____
CERTIFIED BY _____
FAVORABLY _____
UNFAVORABLY _____

**AN ORDINANCE AMENDING ORDINANCE NO. 9159 ENTITLED TOWING SERVICES
USED BY THE CITY AND ALL RELATED MUNICIPAL CODE SECTIONS**

WHEREAS, the City seeks to define the roles of the towing companies servicing the towing needs of the City;

WHEREAS, fees set and procedures for towing must now be amended; and,

WHEREAS, it is in the best interest of the City of Gary to address changes in procedures that relate to towing services provided to the City.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Gary, Indiana, the Ordinance No. 9159 and the following Gary Municipal Code Sections shall read as follows:

Sec. 40-153. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fiscal body refers to the common council.

City refers to City of Gary.

Officer refers to:

1. A regular member of the Indiana State Police.
2. A regular member of the Gary Police Department.
3. A regular member of the Lake County Sheriff's Department.
4. An individual of an agency designated by ordinance of the fiscal body.

Management Company (Companies) refers to any entity that provides management services relating to towing ordered by the City, including but not limited to dispatch of tows, collection of fees, disbursement of releases or forms, supervision of towing yards, and record keeping.

Mounted items refers to items that are wired, bolted, or fastened to the vehicle with the assistance of tools which include, but are not limited to, stereo equipment, racks, hub caps, and rims.

Towing Contractor refers to any entity that provides towing services at the order of the City of Gary or any of its officers or departments.

Unmounted items refers to items that can be properly removed without the assistance of tools which include, but are not limited to, car seats, bags, cellular phones, wallets, vehicle registration, and title work.

Vehicle Owner refers to an owner of a vehicle or person or entity authorized by law to accept possession of

a vehicle towed at the order of the City.

Sec. 40-154. Scope

The provisions of this article apply only to towing services while operating under contract with the City.

Sec. 40-155. Penalties/ Hearing for Violations

- (a) Any authorized towing contractors, including employees, agents or management company that commits fraud deceit, misrepresentations, a criminal act or violation of any City ordinance in relation to its towing business may have their contractual relationship with the City suspended or terminated and their business license revoked pursuant to Sec. 10-30 of the City of Gary Municipal Code.
- (b) **Declining to tow vehicles ordered towed, failure to post and comply with the towing ordinance, or any violations of the contract may result in the suspension or cancellation of the contract by the Board of Works and Safety.**
- (c) Complaints against a towing contractor for any violations of this ordinance or any actions listed in subsection (a) of this ordinance may be filed in the City of Gary Law Department. Complaints shall be forwarded to the towing contractors within three (3) business days. Failure to send complaints within three (3) business days is not grounds for dismissal of the complaint.
- (d) The Gary Board of Public Works and Safety ("Board of Public Works") is authorized to suspend the contract of any towing contractor for violating any provision of this ordinance or towing contract with the City or any other applicable law or ordinance pending a decision to take any action deemed appropriate by the Board of Public Works for said violation.
- (e) The Board of Public Works shall hold a full hearing before a quorum of the board pertaining to complaint alleging a violation of this ordinance or an unfair business practice filed against a towing contractor at the request of the towing contractor. Said hearing shall take place at a regularly scheduled Board of Public Works meeting within twenty (20) days from date the request is received by the Board of Public Works. Failure to request a hearing within ten (10) days of receipt of a complaint shall waive any right to a hearing and any objections to the decision of the Board of Public Works pertaining to said complaint.
- (f) In the event of a hearing, the towing contractor and complainant shall be given no less than five days' notice of a hearing to be held upon the charges or upon the complaint; and at the time of giving the notice, the parties shall be served in person or by mail with a written statement of the complaint filed. The hearing shall allow for both parties to present evidence and witnesses **and shall be informal in nature in accordance with the Indiana Rules of Evidence and Trial Procedure** as commonly followed in an administrative hearing.
- (g) A decision on the complaint filed with the Board of Public Works shall be announced no later than fourteen (14) days, barring an announced need for additional time by the Board of Public Works for extraordinary circumstances. **The Board of Public Works shall adopt a finding on the record of the meeting stating if a violation was found. If a violation is determined, the finding shall state the grounds for the violation, the action to be taken, and the effective date of the action taken.** The decision of the Board of Public Works for suspension or revocation shall be final **upon confirmation of the decision by the Gary Common Council.** ~~There shall be no grounds for judicial review of the decision of the Board of Public Works.~~ **The Towing Contractor has a right to appeal the decision of the Board of Public works in the superior or circuit court in Lake County, IN.**
- (h) Upon a determination of a violation listed in subsection (a), the Board of Public Works may take an appropriate action, including but not limited to, suspending or terminating of a contract, ordering a towing contractor to pay damages or deducting from a towing contractor's bond to pay damages to any interested party, or permanently disbaring a towing contractor.

Sec. 40-156. Identification of Commercial Towing Vehicles

All commercial towing vehicles operating within the City shall be marked on each side, fully identifying the towing contractor and the phone number and address of its principal place of business in printed letters not less than four inches in height. The markings shall be permanently affixed to the sides of every towing vehicle.

Sec. 40-157. Liability of Vehicle Owner/ Required Releases and Hold Harmless

- (a) The vehicle owner shall be liable for all of the costs incidental to the removal, storage, and release of the vehicle.
- (b) The amount payable by the vehicle owner and/or lien holders for towing the vehicle shall not exceed the amount established by the common council.
- (c) All persons with an ownership interest in a vehicle towed by the City seeking to retrieve possession of the vehicle from a towing contractor must first obtain a release prior to obtaining their vehicle from the towing contractor. A person seeking to obtain a release or hold harmless form should be able to do so at the Gary Police Department front desk or as directed by the Gary Police Department personnel between the hours of 6 am and 10 pm, seven days a week.

Sec. 40-158. Towing Contractor Required Qualifications, Personnel, Equipment and Facilities

- (a) In order to facilitate the removal of vehicles or parts, the City may employ personnel and acquire equipment, property and facilities and/or enter into towing contracts as necessary for the purpose of removal, storage and disposition of a vehicle which was ordered towed by an officer.
- (b) Each towing contractor must be in good standing with the City and have a current contract with the City to tow vehicles for the City except under emergency circumstances. Good standing is determined by the Board of Public Works and includes factors including but not limited to complaints from the public about the towing contractor, current balances owed to the City for towing fee collection, or timeliness and quality of monthly reports submitted.
- (c) All towing contracts entered into by the City shall be approved by the Board of Public Works.
- (d) Only those towing contractors with towing yards / storage areas located within the City limits shall be authorized to tow on behalf of the City under the provisions of this article **unless a contractor appears a member of the Board of Works appears before the Gary Common Council for a waiver. Said waiver shall be determined by the council by a simple majority vote on the record during a public meeting.**
- (e) Each towing contractor shall have at least two tow trucks in good working order at all times. All towing vehicles shall have all necessary emergency lights in good working order and must be clean and in good performing condition.
- (f) **The Board of Public Works may, at their discretion, provide for separate contracts for different towing services needed.**

Sec. 40-159. Rate; Proceeds of Towing; Vehicle Release and Disposal

- (a) Charges for towing services performed by towing contractors at the order of the City are set as follows:
 - (1) **\$180.00 \$140.00** for regular vehicle tow, flatbed tow, or motorcycle tow.
 - (2) \$250.00 for boats, recreational vehicles, trucks over one ton but less than two tons; the fee to the city is waived for Boats and RV's ~~if such item is not claimed by the owner or sold and the towing contractor is responsible for disassembling under state law~~ **which are abandoned and taken to an area designated by the city.**

- (3) \$425.00 per unit, for semi-tractor and trailer.
- (4) \$30.00 per day for outside vehicle storage.
- (5) \$50.00 per day for inside vehicle storage.
- (6) \$75.00 per day for outside vehicle storage for semi-tractors including each trailer attached thereto.
- (7) \$125.00 per day for inside vehicle storage for semi-tractors including each trailer attached thereto.
- (8) **\$25.00 per "clean-up" following an accident or disable vehicle, including parts, debris, and automotive fluid, \$35 for extensive clean-up. "Clean-up" fees may only be collected if ordered by the law enforcement agency and documented with the towing request. Only one "clean-up" fee shall be awarded per accident or disabled vehicle scene.**
- (9) All city-owned vehicles are to be towed within the city limits free of charge. **Contractors may charge the City for City vehicles towed from or to outside of City limits at a rate of \$5.00 per mile up to 20 miles round trip. Thereafter, normal towing fee mileage of two dollars (\$2) per mile shall apply or the normal rate of towing, whichever is less.**
- (10) If the vehicle is retrieved within twenty-four (24) hours of the vehicle arriving on the tow lot, then there will be no storage charge for the first day. Any delay on the part of the towing contractor will not count against this period. However, if the vehicle is retrieved after said period, then the initial twenty-four (24) hour period of storage will be included in the charge of storage fees. All storage fees are calculated based upon calendar days.
- (11) No other fees shall be assessed by a Towing Contractor to a vehicle owner except for those fees described in Sec. 40-159 (b)(2).

(b) The City shall collect the following fees per tow:

(1) Release Fee:

- 1 \$50.00 Release Fee from the vehicle owners for each tow described in subsection (a) (1) & (2) of this section.
- 11 \$100 Release Fee for each towed vehicle described in subsection (a)(3). This fee shall be collected at the time the vehicle is released by the City.

(2) Tow Fee:

- 1 \$40.00 Tow Fee for each tow described in subsection (a) of this section, except for those tows described in section (a)(3) of this section.
- 11 \$75 Tow Fee for each tow described in section (a)(3) of this section.
- 111 Tow fees are to be collected by the Towing Contractor from the person or entity retrieving the vehicle from the tow yard or the person or entity who purchases vehicle at auction. Tow Fees are to be paid by the Towing Contractor if the vehicle does not sell at auction and title is salvaged or transferred to the Towing Contractor. All Tow Fees collected by or due from the Towing Contractor are to be paid to the City in accordance with this ordinance.

- IV Towing Contractors may seek a payment deferral on the payment of the Tow Fee for each unreleased vehicle until the vehicle is released or title is legally transferred through auction or otherwise. The Tow Fee may be charged by towing contractor to the person or entity retrieving the vehicle from the towing contractor or legally acquiring title to the vehicle. Said payment deferrals must be specifically requested for each unreleased, sold, or otherwise disposed of vehicle in the monthly towing report. Any tow fees that are not deferred will be due in accordance with subsection (v) below.
 - V The Tow Fee to the city is waived for Boats and RV's towed under subsection (a)(2) of this section if such item is not claimed by the owner or sold ~~and the towing contractor is responsible for disassembling under state law.~~
 - VI The Tow Fees shall be collected from the Towing Contractor in aggregate on a monthly basis and submitted to the City Controller no later than the 5th day of each month, **or the next business day thereafter if the Controller's Office is closed on the 5th**, for all vehicles towed at the order of the City in the previous month.
- (c) The City Controller is directed to deposit the funds derived from the fees described in subsection (b) of this section into the Police Department's auction fund.

(d) Fee Waiver

- (1) The City of Gary Police Chief or the Acting Chief of Police shall have, within his or her discretion, the authority to waive the above listed fees for City-ordered tows under reasonable circumstances, such as a mistake on behalf of the City or towing contractor or for a victim of a crime related to the towed vehicle.
 - (2) **Contractor may appeal the waiver of towing fees and release of vehicles to the Board of Public Works if said waiver is believed to be an abuse or improper waiver. However, the Contractor cannot deny release or waiver of the vehicle ordered by the Chief of Police or Acting Chief of Police. Failure to release vehicles or waive fees as ordered may result in immediate termination of contract and an action for any damages by the Board of Works.**
- (e) Towing Contractors may only charge fees specifically listed in this ordinance. Failure to comply with this provision shall be deemed a violation of this ordinance and grounds for suspension or termination of any applicable towing contract under Sec. 40-155 as well any applicable civil liability for overcharging.
- (f) Any unlawful sale or disposal of a vehicle shall be deemed a violation of this ordinance and grounds for suspension or termination of any applicable towing contract under Sec. 40-155 as well any applicable criminal liability.
- (g) Unreleased vehicles that qualify to be sold at auction shall follow the procedure set out in Gary Ord. No. 7420 and all amendments thereto.

Sec. 40-160. Repealed. (Previously towing zones section)

Sec. 40-161. Hours of Operation, Signage, Release of Personal Property

- (a) Each towing contractor shall be available to tow vehicles on behalf of the City 24-hours per day, seven days per week within thirty (30) minutes of being summoned by an authorized officer.

- (b) Each towing contractor shall make towed vehicles available for release within one-hour notice between the hours of 6 AM and 10 PM, seven days a week.
- (c) Signage with tow and storage fee information shall be prominently displayed in public view where tow fees are collected. This includes the fees listed in the most recently enacted or amended version of this ordinance.
- (d) Personal Property Release - No fees shall be required for the release of any non-mounted personal property from the vehicle owner's towed vehicle. Towing contractors are only required to allow vehicle owners to retrieve non-mounted personal property during normal business hours. Towing companies may require vehicle owners to sign a waiver, release, or hold harmless prior to entering the tow yard to retrieve personal property.

Sec. 40-162. Liability Insurance and Surety Performance Bond

- (a) All authorized towing contractors shall carry liability insurance in the amount of \$1,000,000.00 and present evidence of said insurance annually to the City Controller.
- (b) All authorized towing contractors shall provide a **surety performance bond** in such form and with sureties acceptable to the CITY in an amount of \$50,000. The bonds shall guarantee the performance of CONTRACTOR's services and may be renewable on an annual basis with notice of such renewal being made to the CITY thirty (30) days prior to the anniversary date of the CONTRACT, but, in any event, must remain in full force and effect during the term of this CONTRACT. The bond is required to guarantee remittance of CITY fees collected by CONTRACTOR in a timely manner or to cover any damages caused by the CONTRACTOR. Any amount properly deducted from the bond to any amounts owed by the CONTRACTOR for fees or costs or losses associated with City-towed vehicles must be timely restored by CONTRACTOR to maintain the full amount of the bond.
- (c) **Failure to maintain Bodily Injury and Property Damage Insurance and a surety bond with the City of Gary listed as an additional insured may result in termination of the towing contract.**

Sec. 40-163. Towing Yard/ Storage Area

- {a) Towing contractors shall maintain an adequate storage lot facility or garage to be used for the storage and safekeeping of impounded vehicles.
- (b) Towing Yards / storage facilities shall be large enough in area to store the number of vehicles towed on behalf of the City within its confines without interruption.
- (c) Towing Yards/ storage facilities shall have fenced or walled-in areas to store and protect vehicles. Vehicles towed must be stored safely and properly.
- (d) Towing Yards / storage facilities must maintain cleanliness and neatness of the outer perimeter with no junk cars in public view at all times.
- (e) Towing Yards/ storage facilities must also have adequate signage identifying the business and a phone number that the general public can reach to retrieve their vehicles outside of normal business hours in accordance with the times referenced in Sec. 40-161(b).

Sec. 40-164. Towing Reports

Towing contractors shall submit a monthly report to the City Controller, City Police Department, and Common Council on the number of tows for the previous month no later than the 5th day of each month.

Repeal of Prior Law

This ordinance repeals all prior ordinances and municipal code sections, specifically Ordinance No. 9159 and all related code sections, that are inconsistent with the letter and spirit of this ordinance.

BE IT FURTHER ORDAINED, that if any part, paragraph, sentence, clause or provision of this Ordinance shall be held invalid, the remainder shall not be affected.

BE IT FURTHER RESOLVED by the Gary Common Council that this ordinance shall have full and effect from and after the public hearing hereon, passage and approval hereof by the Common Council, signing by the President thereof, and approval and signing by the Mayor of the City of Gary.

This Ordinance shall be in effect _____, 2022 after its passage by the Council in compliance with I.C. 36-4-6-16.

PASSED AND ADOPTED by the Common Council of the City of Gary, Indiana this ___ day of _____ 2022.

Council President

ATTEST:

Suzette Raggs, City Clerk

Presented by me to the Mayor for his approval and signature this ___ day of _____ 2022.

CITY CLERK

APPROVED and **SIGNED** by me this ___ day of _____ 2022.

MAYOR, CITY OF GARY, INDIANA

PREPARED BY: RODNEY POL, JR. - CITY OF GARY LAW DEPARTMENT

SPONSORED BY: JEROME PRINCE, MAYOR

COMMITTEE ASSIGNMENT _____ Reported-out/Date _____
1st Reading/Date _____ Committee Hearing/Date _____
2nd Reading/Date _____ Public Hearing/Date _____
3rd Reading/Date _____ Final Reading/Date _____
Passed/Date _____ Defeated/Date _____ Deferred/Date _____
Tabled/Date _____ Override/Date _____ Adopted/Date _____
Publication/Date _____ Community Hearing/Date _____
Veto _____ Pocket Veto _____ Adopted _____