

PENDING ORDINANCE 2017-08  
ORDINANCE NO. 9159  
AS AMENDED 04/17/2018  
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) 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 complaint within three (3) business days is not grounds for dismissal of the complaint.
- (c) 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.
- (d) The Board of Public Works shall hold a full hearing before a quorum of the board pertaining to a 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 the 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.
- (e) 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 in accordance with the Indiana Rules of Evidence and Trial Procedure as commonly followed in an administrative hearing.
- (f) 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 decision of the Board of Public Works for suspension or revocation shall be final. There shall be no grounds for judicial review of the decision of the Board of Public Works.
- (g) 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 disbarring 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 shall 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.
- (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.

**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) \$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.
  - (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) 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.

- (9) 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:

- i \$50.00 Release Fee from the vehicle owners for each tow described in subsection (a) (1) & (2) of this section.
- ii \$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 Franchise fee:

- i \$40.00 Tow Franchise Fee for each tow described in subsection (a) of this section, except for those tows described in section (a)(3) of this section.
- ii \$75 Tow Franchise Fee for each tow described in section (a)(3) of this section.
- iii The Tow Franchise 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.
- iv The Tow Franchise Fees shall be paid by the Towing Contractor in aggregate on a monthly basis and submitted to the City Controller no later than the 5<sup>th</sup> day of each month 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- The City of Gary Police Chief or his or her designee shall have, within his or her discretion, the authority to waive the above listed fees for City-ordered tows only under specific 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.
- (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 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 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.

**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 5<sup>th</sup> day of each month.

**Repeal of Prior Law**

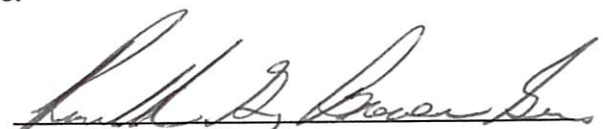
This ordinance repeals all prior ordinances and municipal code sections, specifically Ordinance No. 8954 and all related code sections, that are inconsistent with the letter and spirit of this ordinance.

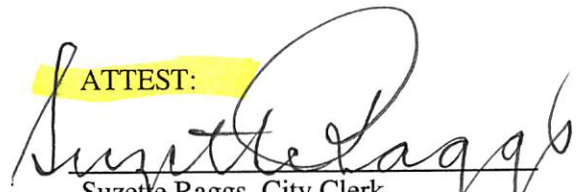
**BE IT FURTHER ORDAINED**, that if any part, paragraph, sentence, clause or provision of this Ordinance shall be held invalid, the remainder shall not be affected.

**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.

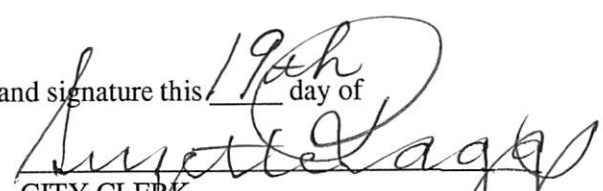
This Ordinance shall be in effect \_\_\_\_\_, 2018 after its passage by the Council in compliance with I.C. 36-4-6-16.

**PASSED AND ADOPTED** by the Common Council of the City of Gary, Indiana this 17<sup>th</sup> day of April, 2018.

  
Ronald Brewer, President

**ATTEST:**  
  
Suzette Raggs, City Clerk

Presented by me to the Mayor for his approval and signature this 19<sup>th</sup> day of April, 2018.

  
CITY CLERK

**APPROVED and SIGNED** by me this 19 day of April, 2018.

  
MAYOR, CITY OF GARY, INDIANA

PREPARED BY: CITY OF GARY LAW DEPARTMENT

SPONSORED BY: HERBERT SMITH, JR.

C.P.O. 17-08/9159

COMMITTEE ASSIGNMENT <u>Towing</u>	Reported-out/Date <u>3-20-18</u>
1st Reading/Date <u>3-20-18</u>	Committee Hearing/Date <u>3-27 4-10</u>
2nd Reading/Date <u>3-20-18</u>	Public Hearing/Date <u>4-17-18</u>
3rd Reading/Date <u>4-17-18</u>	Final Reading/Date <u>4-17-18</u>
Passed/Date <u>4-17-18</u>	Defeated/Date <u>-</u>
	Deferred/Date <u>-</u>
Tabled/Date <u>-</u>	Adopted/Date <u>-</u>
Override/Date <u>-</u>	
Publication/Date <u>-</u>	Community Hearing/Date <u>-</u>
Veto <u>-</u>	Adopted <u>-</u>
Pocket Veto <u>-</u>	