

ORDINANCE

WHEREAS, For decades, predatory tow truck operators - commonly referred to as "wreck chasers" - have operated on our City streets with impunity, endangering drivers, pedestrians, cyclists, and first responders with their dangerous and reckless activities; and

WHEREAS, In fact, courts across the country have routinely found that wreck chasers pose a genuine threat to public safety, including right here in Illinois; and

WHEREAS, For example, in a case addressing challenges to the Illinois Commercial Safety Towing Act (*Prof'l Towing & Recovery Operators of Ill. v. Box*), a federal court specifically found that wreck chasers posed a threat to safety:

- *There is no dispute that wreck chasing is a safety concern;*
- *[W]reck chasing ... is also a safety hazard - a real one, the Court does not doubt that;*
- *There is no question that the ... requirement frustrates wreck chasing. By doing so, it is responsive to concerns about safety;*
- *[The] requirements are genuinely responsive to safety concerns because they attack the way that typical wreck chasers operate;*
- *Because there is no question that wreck chasing is a safety concern, and, like the registration requirement, that the disclosure requirement makes it difficult for wreck chasers to operate, the regulation avoids federal preemption even though it smuggles-in economic regulations, and does so intentionally; and*

WHEREAS, As that federal court found, "[i]t's a simple point: Wreck chasers are unprofessional towers" and, more importantly, "the Towing Law forces wreck chasers off the road, and that makes Illinois roads safer"; now, therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4-227-030 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-030 Application – Additional information required.

(a) In addition to the requirements set forth in Section 4-4-050, an application for, and, if requested, renewal of any license to engage in the business of towing shall be accompanied by the following information:

(Omitted text is unaffected by this ordinance)

(11) if the applicant does not possess an active Illinois Commercial Vehicle Relocator License and operates a storage lot outside the City limits, such information as determined necessary by the Commissioner to ensure the safety of such storage lot; ~~and~~

(12) a description of the proposed services to be provided by the applicant, including days and hours of operation for each storage lot to be operated under the license, an after-hours contact number for licensee, and a system of handling complaints;

(13) a complete fee schedule setting forth the applicant's standard fees for towing services, pre-towing services, post-towing services, storage, and other non-towing services incident to the towing or storage of a vehicle, provided that such fee schedule shall comply with Section 4-227-080; and

(14) any other information that the Commissioner may reasonably require.

(Omitted text is unaffected by this ordinance)

SECTION 2. Section 4-227-050 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-050 License and fee schedule – Posting.

The license required under this chapter, or a legible copy thereof, the after-hours contact number, and a copy of the then-current fee schedule on file with the Commissioner shall be posted in a conspicuous place within a part of the storage lot to which the public has access. The licensee or its agent shall be required to produce the license, after-hours contact number, and fee schedule upon request from an authorized City official, or from the operator or owner of a vehicle that has been subject to a tow, or their authorized agent.

SECTION 3. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-075, as follows:

4-227-075 Post-towing services and obligations; fees and other charges.

(a) Post-towing services and obligations.

(1) A vehicle towed or stored by a licensee shall be returned to the owner or operator of such vehicle in substantially the same condition as before being towed or stored.

(2) After a vehicle has been towed to the applicable storage lot, such vehicle shall not be towed to another storage lot or other secondary location, and no licensee may impose a fee for such towing to another storage lot or other secondary location, unless authorized by the owner or operator of such vehicle in writing.

(3) Each licensee is encouraged to accept forms of payment other than cash, including but not limited to commonly recognized traveler's checks, money orders, cashier's checks, certified checks, commonly accepted credit cards and debit cards, and mobile pay. However, if a licensee accepts only cash, the licensee shall provide an automated teller machine within a part of the storage lot to which the public has access and shall provide change at the time of payment, if applicable.

(b) Fees and other charges.

(1) No licensee may impose or demand payment of any fee or charge in excess of licensee's then-current fee schedule on file with the Commissioner.

(2) A licensee may only store and charge a storage fee for vehicles that are in the licensee's actual possession, located within the applicable storage lot. A licensee may not store vehicles or charge for any service performed by another person unless the vehicle's owner or operator authorizes the service or the vehicle's transfer to such other person in writing.

(3) No licensee may impose or demand payment of any fee or charge for the retrieval of contents from a stored or towed vehicle during licensee's then-current days and hours of operation on file with the Commissioner; provided, however, a licensee may charge a reasonable fee, not to exceed \$25, for the retrieval of the contents of a stored vehicle at a time other than during licensee's then-current days and hours of operation on file with the Commissioner.

(4) Unless such fee or charge is disclosed on licensee's then-current fee schedule on file with the Commissioner, no licensee may impose or demand payment of: (1) any fee or charge for a pre-towing service, post-towing service, or any other non-towing service, including repairs and labor, that has not been authorized by the owner or operator of the vehicle in writing; or (2) any gate fee, removal fee, or any other fee or charge to locate, retrieve, view, photograph, or any other similar activity with respect to a vehicle stored in a storage lot during licensee's then-current days and hours of operation on file with the Commissioner; provided, however, a licensee may charge a reasonable fee, not to exceed \$50, for the retrieval of a stored vehicle at a time other than during licensee's then-current days and hours of operation on file with the Commissioner.

SECTION 4. Section 4-227-080 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-080 Prohibited Acts.

(a) Generally applicable prohibitions. It shall be unlawful for any licensee, or any employee or agent of any licensee, to:

(Omitted text is unaffected by this ordinance)

(2) violate any requirement in the Illinois Commercial Safety Towing Law or any rule duly promulgated thereunder; ~~or~~

(3) fail to take reasonable steps to prevent violations of this chapter, or any rule duly promulgated hereunder, by employees or agents of the licensee; or

(4) engage in any of the following practices:

(Omitted text is unaffected by this ordinance)

(iii) make any false, misleading, or threatening statement or representation, or any other false statement of material fact to the vehicle owner or operator for the purpose of, or any statement to the owner or operator which has the effect of, coercing the owner or operator to engage the licensee's towing services, including any misrepresentations that the licensee is approved by, authorized by, or otherwise affiliated with any insurance company or government

agency, or that any insurance company or other third-party will pay all or any portion of the charges for the towing service transaction-;

(iv) impose any fee or charge prohibited under this chapter or other applicable law that is not authorized by the operator or owner of the vehicle in writing, any fee or charge for services not rendered, or any fee or charge in excess of the then-current fee schedule on file with the Commissioner;

(v) give or offer any payment, fee, reward, or other thing of value, directly or indirectly, for supplying information concerning a damaged or disabled vehicle which may require towing services, which information may be used to solicit the vehicle owner or operator to enter into a towing service transaction in violation of Section 11-1431 of the Illinois Vehicle Code, codified at 625 ILCS 5/11-1431;

(vi) make repairs for consideration on a vehicle unless the owner or operator has signed an agreement which includes an estimate of the cost of such repairs; or

(vii) impose a fee or charge, directly or indirectly, for any pre-towing services, post-towing services, or any other non-towing services, including repairs and labor, that have not been authorized by the owner or operator of the vehicle in writing.

(Omitted text is unaffected by this ordinance)

(c) Post-Towing Storage and Release of Vehicles. After a vehicle has been towed, it shall be unlawful for any person engaged in the business of towing to:

(1) violate any applicable requirement of the Labor and Storage Lien Act (770 ILCS 40/ et seq.), the Labor and Storage Lien (Small Amount) Act (770 ILCS 50/ et seq.), or Chapter 4 of the Illinois Vehicle Code (625 ILCS 5/4 et seq.);

(2) prohibit the owner or operator of the towed vehicle, regardless of whether such owner or operator has or is able to immediately pay any applicable fees or charges, from accessing the vehicle to retrieve any personal belongings;

(3) require or otherwise condition licensee's towing services or the release of a vehicle that has been towed and is stored at a storage lot upon the owner or operator of the vehicle authorizing repairs or other services beyond the towing of the vehicle; or

(4) refuse to release any vehicle from a storage lot to any person legally entitled to custody of such vehicle during licensee's then-current days and hours of operation on file with the Commissioner.

(d) Release of improperly towed vehicles. Any licensee, or any employee or agent of a licensee, that solicits or tows a vehicle in violation of ~~subsection (a)~~ of this section shall release such vehicle, without payment or lien, to the owner of the vehicle upon request.

~~(d)~~(e) Additional prohibitions. It shall be unlawful for any licensee, or any employee or agent of a licensee, to violate any requirement of Chapter 9-84 of this Code or in any rule duly promulgated thereunder or violate any requirement in the Illinois Commercial Relocation of Trespassing Vehicles Law or any rule duly promulgated thereunder, if applicable.

SECTION 5. Section 4-227-140 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-140 Violation – Penalty.

(Omitted text is unaffected by this ordinance)

(c) In addition to any other penalties required under this section, any vehicle used to solicit or tow a vehicle in violation of this chapter ~~Section 4-227-080(a)(3) or 4-227-080(b)~~ shall be subject to seizure and impoundment pursuant to this section. The owner of record of such vehicle shall be liable to the City for an administrative penalty of \$10,000, in addition to fees for the towing and storage of the vehicle as provided in Section 9-92-080.

(Omitted text is unaffected by this ordinance)

SECTION 6. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-150, as follows:

4-227-150 Authority to impound vehicles previously used in violation of this chapter.

(a) A police officer may seize and impound a vehicle previously used to solicit or tow a vehicle in violation of this chapter when the operator or owner of the vehicle is not present, provided that the requirements of this section are met. Before any seizure or impoundment under this section, the Department of Police shall send to the owner of record of the vehicle to be seized and impounded, either by first class mail or by messenger to the address of the owner of record as indicated in state registration records, a notice of intent to seize and impound the vehicle that includes: (i) a statement that an operator of the vehicle violated the applicable section; (ii) the date, approximate time and approximate location of the alleged violation; (iii) a description of the vehicle, including the vehicle make and color, and the vehicle's license plate number with the issuing state; and (iv) the owner's opportunity to contest eligibility for impoundment. A copy of the notice shall be forwarded to the Department of Administrative Hearings. A notice is presumed to be delivered upon being deposited with the United States Postal Service with proper postage affixed.

(b) An owner of record who receives a notice pursuant to this section may contest eligibility for impoundment by written request delivered to the Department of Administrative Hearings, postmarked within 14 days after the delivery of the notice. The Department of Administrative Hearings shall set a date for a hearing on the eligibility of the vehicle for impoundment, and shall notify the owner of the date, time, and place of the hearing. The hearing date must be no more than 30 days after a request for a hearing has been filed. At the hearing the Department's evidence of probable cause shall be considered prima facie correct. In order to disprove the vehicle's eligibility for impoundment, the owner of record must prove that:

(1) at the time and date of the alleged violation as described in the notice, the described vehicle was not operated within the City; or

(2) the vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered; or

(3) the license information described in the report does not match the listed make of the described vehicle.

If the owner of record prevails, the notice of intent to impound the owner's vehicle shall be withdrawn and the vehicle shall not be eligible for impoundment under this section.

(c) If a vehicle owner receives a notice pursuant to this subsection and: (i) fails to contest eligibility; or (ii) does not prevail in the contest of eligibility, the vehicle described in the notice shall be eligible for impoundment if found on the public way within 12 months following the conclusion of the contest, if a contest was requested, or following the last date to request a contest, if none was requested. Provided, however, if the owner of the vehicle that is eligible for impoundment under this subsection pays the administrative penalty provided in subsection (d) any time before such vehicle is impounded, the vehicle shall not be eligible for impoundment.

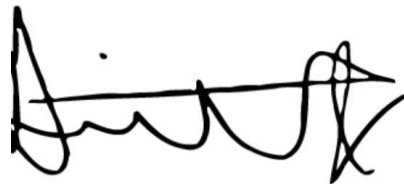
(d) The owner of a vehicle eligible for impoundment under this section shall be subject to an administrative penalty of \$10,000. If such vehicle is impounded, the owner of the vehicle shall be subject to the administrative penalty plus the applicable cost of towing and storage of the vehicle under Section 9-92-080.

SECTION 7. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-160, as follows:

4-227-160 Private right of action.

Any aggrieved person may enforce the provisions of this chapter by means of a civil action in which the court may provide injunctive relief or award treble damages, plus the plaintiffs' court costs and reasonable attorneys' fees.

SECTION 8. This ordinance shall take effect 10 days after passage and publication.



GILBERT VILLEGAS
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