

RESOLUTION NO. HR 12-9-2

A Home Rule Resolution of the Board of County Commissioners of Douglas County, Kansas Establishing a County Contract Tow Rotation List and Governing Towing and Towing Services

WHEREAS, K.S.A. 19-101, *et seq.*, provides the Board of County commissioners of Douglas County, Kansas (the "Board") with home rule authority to transact all County business and perform all powers of local legislation and administration it deems appropriate; and

WHEREAS, the Board recognizes the need for the protection of the health, safety and welfare of citizens through contracts for County initiated tows and regulations controlling certain non-preference tows.

NOW THEREFORE, the Board, exercising its home rule authority, resolves that:

SECTION I. Adoption of Tow Service Provisions. The following is enacted and added as Article 15 (Towing) of Chapter I (Administration) of the Douglas County Code:

CHAPTER 1: ADMINISTRATION

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ARTICLE 15: TOWING

1-1501. TOWING/IMPOUNDING VEHICLES.

A. Authority to Tow. The Sheriff's Office and its members may cause any vehicle to be immediately towed under any of the following circumstances, without the prior consent or authorization of the owner or operator of the vehicle:

1. When a vehicle is unattended or abandoned upon a public road or public property and either is parked in a tow zone, interferes with the normal movement of traffic or public business, or otherwise poses a danger to the public health, safety or welfare; or
2. When a vehicle is unattended or abandoned upon a public road or public property for a period of 48 hours; or
3. When a vehicle has been reported stolen or taken without the consent of its owner; or
4. When the owner or operator of a vehicle is unable to provide for its custody or removal; or

5. When a vehicle upon a public road or public property (or adjacent to a public road as a result of an accident) is so disabled or unsafe as a result of an accident or otherwise as to constitute an obstruction to traffic or otherwise poses a danger to the public health, safety or welfare, and the owner or operator of the vehicle is unable or refuses to provide for its custody or removal (the failure of the owner or operator to request a specific tow service provider that is willing and able to respond within the timeframe that the Sheriff's Office or its members determines necessary under the exigencies of the situation shall be deemed the refusal to provide for its removal); or
6. When the person in charge of a vehicle has been arrested or otherwise taken into custody or detained for an alleged offense; or
7. When a vehicle has been used in the commission of a crime or is otherwise subject to seizure as evidence in a criminal prosecution; or
8. When a vehicle is subject to seizure or forfeiture under the laws of Kansas or the United States; or
9. Any other reason authorized by applicable law.

B. Authority to Impound. The Sheriff's Office and its members may cause any vehicle to be immediately impounded as they deem necessary within the normal course of business. Any vehicle so impounded for evidence shall be disposed of in accordance with any orders of a court having jurisdiction over the matter, or as otherwise allowed by law once the vehicle is no longer needed for evidentiary purposes.

1-1502. NOTICE TO OWNER OF TOWED VEHICLE. Whenever any vehicle is towed pursuant to the provisions of Section 1-1501 of this Article, as amended, the tow service provider shall comply with all notice provisions as outlined in K.S.A. 8-1102 through 8-1104, and amendments thereto.

1-1503. RELEASE OF TOWED VEHICLE. Unless the vehicle is being held or seized as evidence, all vehicles towed pursuant to the provisions of this Article shall be released to the owner or authorized representative by the tow service provider upon satisfaction of the provisions as outlined in K.S.A. 8-1102 through 8-1108, and amendments thereto, except fees and charges shall not exceed those provided for in Section 1-1513 of this Article, as amended.

1-1504. SALE OF VEHICLE. An authorized tow service provider may proceed to dispose of towed vehicles, or to foreclose any possessory lien created by operation of law, in the manner provided in K.S.A. 8-1102 through 8-1108,

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and amendments thereto, unless a hold has been requested for a particular vehicle by the Sheriff's Office or other law enforcement agency.

- 1-1505. **CONTRACT TOWING.** It is hereby declared and found by the Board of County Commissioners to be of vital importance to the safety of the traveling public for disabled or abandoned vehicles and vehicles found on public streets to be removed as promptly as possible; that delay in removal can impede the movement of traffic unnecessarily and can cause further accidents; that the solicitation of tows at accident scenes can lead to unnecessary traffic congestion and unsafe and chaotic conditions; and, as a result, that the towing of vehicles from public roads and public property is a matter affecting public safety. Consequently, vehicle tows should be subject to contracts with the County for the purpose of safeguarding the public.

It is further declared and found by the Board of County Commissioners that the practice of towing, removing and storing of vehicles are matters affecting public safety and require uniformity, efficiency, dependability, and consistency, and any person desiring to perform towing operations for the Sheriff's Office and other County officials shall enter into a Tow Service Provider Contract and comply with the provisions of this Article. The purpose of these Tow Service Provider Contracts and the provisions of this Article are to provide a uniform, efficient, dependable, and consistent system for obtaining services from tow companies which are engaged in or which intend to engage in the practice of towing, removing and storing of vehicles at the request of the Sheriff's Office and other County officials.

Any person desiring to perform tow services at the request of the Sheriff's Office or other County official and who meets the requirements of all other provisions of this Article and enters into a Tow Service Provider Contract shall be eligible to be placed on the County contract tow rotation list and be called on a rotation basis.

- 1-1506. **TOWING SERVICE PROVIDER CONTRACT REQUIRED.** Each tow service provider seeking placement on the County contract tow rotation list and designation as an authorized tow service provider to perform tow services at the request of the Sheriff's Office, the Emergency Communications Department, or other County official shall make written application to the County Administrator or his designee at least 30 days prior to the desired effective date and shall enter into a Tow Service Provider Contract with the County, in form and substance that the County Administrator approves. Each Tow Service Provider Contract shall generally be for a calendar year and renewal applications should be submitted at least 30 days prior to the expiration date of the then-current contract term. A tow service provider may terminate its designation as an authorized tow service provider, and therefore be removed from the

County contract tow rotation list, by providing 5 calendar days advance written notice to the County Administrator.

1-1507. **CONTRACT TOW REQUIREMENTS.** The following requirements and criteria shall be met by any tow service provider desiring placement on the County contract tow rotation list and designation as an authorized tow service provider pursuant to a Tow Service Provider Contract:

- A. Exclusive of state recognized holidays, each authorized tow service provider shall have a representative available (by phone or at the premises where a towed vehicle is stored) from 8:00 a.m. to 5:30 p.m., Monday through Friday to release any towed vehicle within one hour of the owner's or authorized representative's request. No additional charge shall be assessed for releasing a vehicle during these days and hours. During all other times, the authorized tow service provider shall have a representative available by phone and able to meet the owner or authorized representative at the premises where the towed vehicle is stored or kept for releasing a vehicle. For a vehicle released during these other times, the authorized tow service provider may not assess a fee in excess of the maximum charges provided for in Section 1-1513 of this Article, as amended. Each authorized tow service provider shall conspicuously post a sign at the front of its business stating the business name and a telephone number where information can be obtained about any vehicle towed or stored by the business. If an authorized tow service provider's phone number changes during the term of any Tow Service Provider Contract, the authorized tow service provider shall provide the County Administrator with the new number before the change becomes effective.
- B. Each authorized tow service provider shall have drivers and wrecker services available to respond to tow requests on a 24 hour per day, 7 days a week basis.
- C. Each authorized tow service provider shall clean-up accident debris including but not limited to dirt, broken glass, metal, and other car pieces associated with the vehicle being towed, including but not limited to the use of oil dry or a similar product to clean up any fluid spills, unless otherwise directed by an official overseeing or having jurisdiction of the accident.
- D. Each authorized tow service provider must have properly zoned adequate storage facilities within the County. Outside storage areas shall be fenced, with at least 6 foot high chain link or similar security fence and shall be adequately secured.

- E. Each authorized tow service provider must have available storage area which is totally enclosed within a building for the protection and security of vehicles with broken windows and valuable property left in vehicles.
 - F. Each authorized tow service provider must agree to handle and tow abandoned vehicles in addition to tow requests received for damaged or disabled vehicles.
 - G. Each authorized tow service provider must provide the County with proof of the following insurance protection:
 - 1. Public liability insurance indemnifying the public generally against damages arising out of the operation of the wrecker service. The authorized tow operator shall be responsible for entering the County on such policy or policies of insurance as a named insured. Such policy or policies of insurance shall be in an amount of at least \$500,000.00 for one person, \$500,000.00 for one accident, and \$500,000.00 property damage and a minimum aggregate limit of \$1,000,000.00. This coverage can be provided as a combined single limit.
 - 2. Garage keeper's minimum liability policy covering fire, theft or damage to or loss of property while in tow or otherwise in the care, custody and control of the authorized tow operator. Such policy or policies of insurance shall be in an amount of at least \$100,000.00 for each individual claim up to a maximum aggregate limit of \$200,000.00 per occurrence.
- Proof of insurance must be furnished on standard Acord® certificate of insurance forms. The County is to be named as a named insured on all required insuring agreements and each certificate must state that the County will be given 10 days advanced written notice if the policy is canceled or changed.
- H. Each authorized tow service provider must enter into and sign a Tow Service Provider Contract with the County.
 - I. Each authorized tow service provider must provide the County with proof that it has a valid certificate of public service issued from the Kansas Corporation Commission.
 - J. The criteria and requirements set forth in this Subsection A through I of this Section shall not apply when the owner or operator of the

vehicle to be towed requests services from a specific tow service provider and the vehicle is towed by that provider.

1-1508. COUNTY CONTRACT TOW ROTATION LIST. Based upon information provided by the County Administrator or his designee, the Emergency Communications Department shall maintain a list of authorized tow service providers to be used in providing rotation tow services for the County.

- A. When a tow is needed, the law enforcement officer will communicate the need for a tow to the dispatcher on duty. On receiving this communication, the dispatcher shall, as a general rule, call the next authorized tow service provider on the County contract tow rotation list to remove the vehicle and that authorized tow service provider shall then be moved to the bottom of the list. On each succeeding communication, the next tow service provider on the list is generally assigned. In the event an authorized tow service provider cannot be reached by the dispatcher or cannot provide the requested tow within the timeframe required, that authorized tow service provider shall forfeit its turn, that authorized tow service provider shall be moved to the bottom of the list, and the dispatcher shall generally call the next succeeding authorized tow service provider on the list. If an authorized tow service provider at the top of the contract tow rotation list is dispatched and the dispatch does not result in a vehicle tow due to no fault of the authorized tow service provider, such authorized tow service provider shall be moved back to the top of the list. The dispatcher shall keep a continuous rotation of each authorized tow service provider on the master County contract tow rotation list.
- B. The County contract tow rotation list provided for in this Article may be used for tows that are initiated by law enforcement officers or other officials of other jurisdictions within the County if the governing body of that jurisdiction specifically requests the Emergency Communications Department to use such list for its tows, in which case, the provisions of this Article and the Tow Service Provider Contract shall apply to such tows.
- C. Placement on the County contract tow rotation list shall be by alphabetical order. In the event a new tow service provider becomes authorized, it shall be placed on the list in alphabetical order, regardless of its resulting place in the rotation.

The Sheriff's Office and other County officials shall not be obligated to use the County contract tow rotation list for any of the following:
(i) special events where one or more tows may be necessary; (ii)

tows involving impounding of a vehicle for evidentiary or other criminal investigation or law enforcement purposes; or (iii) tows involving County owned vehicles. Instead, the County may enter into an agreement with one or more tow service providers as needed for any such purposes. For purposes of this Section, special events shall include, but not be limited to, concerts, festivals, sobriety checkpoints, or any other similar event.

1-1509. **MAXIMUM FEES AND CHARGES.** No authorized tow service provider towing a vehicle pursuant to the County contract tow rotation list, and no any towing company towing a vehicle, without the prior consent or authorization of the owner or operator of the vehicle shall charge any towing, storage, or related fees in addition to or in excess of those provided for in Section 1-1513 of this Article, as amended. The County shall not be responsible for unpaid towing charges for such contract tows except as agreed to in writing by a County official.

1-1510. **SUSPENSION OR REVOCATION OF APPROVAL AND AUTHORIZATION; GROUNDS.**

A. Suspension or Revocation. The County Administrator or his designee may order that the approval and authority of an authorized tow service provider be suspended or revoked. Any such suspension shall temporarily remove the tow service provider from the contract tow rotation list and may be effective a maximum of 60 calendar days after any noted deficiency is corrected, with the period of suspension to be determined by the County Administrator or his designee. Any such revocation shall permanently remove the tow service provider from the contract tow rotation list and shall terminate the Tow Service Provider Contract with the tow service provider. A revoked tow service provider may be reinstated after entering into a new Tow Service Provider Contract but only upon terms and conditions that lead the County Administrator or his designee to conclude that whatever problems or deficiencies had existed are permanently remedied. Such suspension or revocation may be based upon good cause, including but not limited to any one or more of the following:

1. The tow service provider obtained its authority as an authorized tow service provider by fraudulent conduct or false statements;
2. The tow service provider has failed to comply with the provisions of this Article;
3. The tow service provider violated the fee and charge schedule by overcharge;

4. The tow service provider has consistently refused to respond to requests for services from the Emergency Communications Department or the Sheriff's Office or has consistently failed to answer telephone calls from them at the telephone number supplied by the tow service provider;
5. The tow service provider has responded to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicited wrecker or towing business; and
6. The County is not satisfied with the general services of the owner and/or employees of the tow service provider or with the cooperation it has received from such tow service provider or other justifiable cause.

B. Appeal: Such suspension or revocation shall be by written notice to the tow service provider and shall contain the reasons for the suspension or revocation. The tow service provider may appeal such decision to the Board of County Commissioners or its designee by filing notice with the County Administrator within 10 calendar days of the notice of suspension or revocation. The Board of County Commissioners or its designee shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation.

C. No Vested Rights: Nothing in this Article, the County's designation as an authorized tow service provider, the County's entering into a Tow Service Provider Contract with any tow service provider, or the County's utilization of any tow service provider for tows shall confer any vested property rights upon the tow service provider to continue as an authorized tow service provider, to remain on the County contract tow rotation list, or to tow any vehicle for the County.

1-1511. **SOLICITATION PROHIBITED.** No tow service provider or tow service provider's employee, driver or contractor shall stop, stand or park a tow truck at or near the scene of an accident or at or near a disabled vehicle within the unincorporated areas of the County for the purpose of soliciting an agreement for towing services, unless such tow service provider, employee, driver or contractor has been called to the scene by the Emergency Communications Department, the Sheriff's Office, another law enforcement agency, or by the owner or authorized representative of an involved vehicle.

1-1512. **ACCESS TO PERSONAL PROPERTY.** Any owner or authorized representative of a vehicle towed pursuant to this Article shall have access to personal property that is not affixed to such vehicle for up to 96 hours

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after such vehicle has been towed, and such personal property shall be released to said owner or authorized representative within one hour of the owner or authorized representative's request; except, however, if it is being held or seized as evidence. By becoming an authorized tow service provider and being placed on the County contract tow rotation list, each authorized tow service provider waives any possessory lien, to the extent it even has one, in any such personal property. The authorized tow service provider shall not charge any additional fee for retrieval of personal property during the hours and days specified in Section 1-1507 of this Article, as amended. For personal property released during other times, the authorized tow service provider may not assess a charge in excess of the maximum fee provided for in Section 1-1513 of this Article, as amended.

1-1513. MAXIMUM TOW, STORAGE, AND RELATED FEES.

- A. Charges for towing, storage and other related services in connection with any vehicle towed or impounded pursuant to the County contract tow rotation list or otherwise towed without the prior consent or authorization of the owner or operator of the vehicle shall not exceed the maximum fees and charges that the Board of County Commissioners adopts by resolution, as amended and in effect from time to time. These charges are the sole and exclusive charges that may be legally imposed for such towing, storage and other related services and it shall be unlawful to charge fees in addition to or in excess of such maximum fees and charges. All other charges not identified in this Article or by resolution are expressly prohibited, including, without limitation, fuel surcharges, gate fees or other similar unauthorized fees to retrieve vehicles or remove personal property.
- B. These fees include clean-up of all accident debris, including but not limited to the use of oil dry or a similar product to clean up any fluid spills.
- C. A tow service provider or other tow operator may charge a full day's storage fee for any portion of a day the vehicle is stored; provided, however, that no fee shall be charged if the owner or authorized representative retrieves the vehicle within the first 24 hours; provided further that no fee shall be charged for any additional day if a vehicle is stored for the additional day as a result of the tow service provider's or tow operator's failure to release the vehicle to the owner or authorized representative as required of authorized tow service providers in this Article.

1-1514. SEVERABILITY. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

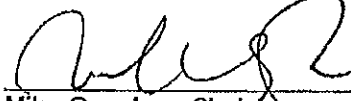
1-1515. PENALTY.


- A. Anyone who directly or indirectly violates any provision of this Article shall be guilty of a misdemeanor fined not less than \$100 nor more than \$500, or by up to one month imprisonment in jail, or both such fine and imprisonment.
- B. Any penalty imposed by this provision shall be in addition to any other remedy at law or equity available to the County, including but not limited to damages for any failure to comply with the provisions of a Tow Service Provider Contract.

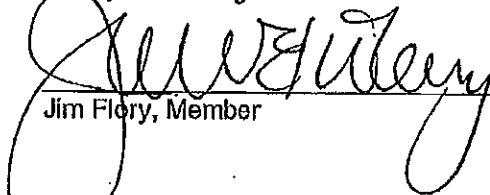
SECTION II. Effective Date. This Resolution shall take effect and be in force from and after the later of the following to occur: (i) its publication once in the official County newspaper, and (ii) November 1, 2012.

IN WITNESS WHEREOF, the foregoing Resolution was adopted this 19th day of September, 2012.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:


Mike Gaughan, Chair


Nancy Thellman, Member


Jim Flory, Member

ATTEST:


Jameson D. Shew, County Clerk