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NOTICE OF PUBLIC HEARING

Colonel Mark W. McDonough
Commissioner

PLEASE TAKE NOTICE THAT on April 24, 2014, at 10:00 a.m. in the Media Room at the Department of Public Safety, 959 East Confederate Avenue, S.E., Atlanta, Georgia, a public hearing will be held for the presentation of proposed administrative rule changes which are attached and incorporated by reference.

The chapter affected by the proposed rule & regulation changes is listed below:

**RULES OF THE DEPARTMENT OF PUBLIC SAFETY
570-6 TRANSPORTATION CHAPTER 1 NON-CONSENSUAL TOWING**

All interested persons are hereby advised of the opportunity to submit data, views or arguments, orally or in writing. Oral comments will be limited to ten minutes per person. Anyone needing more than ten minutes should request additional time by contacting Legal Services, Post Office Box 1456, Atlanta, Georgia 30371, in writing, 24-hours prior to the hearing.*

This __ day of March, 2014.

Colonel Mark W. McDonough
Commissioner

*Anyone with a disability needing assistance should contact Peter Adams, ADA Coordinator, at (404) 624-7850, three days prior to the hearing.

Attachment

**SYNOPSIS OF PROPOSED DEPARTMENT OF PUBLIC SAFETY RULE 570-6-1:
TRANSPORTATION – NONCONSENSUAL TOWING.**

Purpose: The function of regulating nonconsensual towing of vehicles from private property was transferred from the Public Service Commission to the Department of Public Safety in 2012. The rules provide specific procedures for businesses engaged in nonconsensual towing.

Main Features: The rule provides procedures, establishes fees, provides for required signage, records, reports, equipment, insurance and facility requirements for businesses engaged in nonconsensual towing.

RULES OF THE DEPARTMENT OF PUBLIC SAFETY

570-6 TRANSPORTATION

Chapter 1 Non-Consensual Towing

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570-6-1-.01 Definitions.

In addition to the Definitions contained in these Rules and the Transportation Rules of the Public Service Commission existing on July 1, 2012, the term:

- (a) "Attendant" means any person who is authorized by the impoundment facility to release a vehicle from the facility when presented with proper documentation of ownership and payment of appropriate fees.
- (b) "Corporate entity" means any corporation, limited liability company, limited partnership, small business corporation or any other entity or organization registered with the Georgia Secretary of State's Corporations Division.
- (c) "Maximum Rate Tariff" means the publication containing the maximum rates as prescribed by the Department that a wrecker company can assess for the towing and storage of vehicles removed pursuant to the authority granted in the Nonconsensual Towing Permit.
- (d) "Nonconsensual Towing" shall mean towing without the prior consent or authorization of the owner or operator of the motor vehicle being towed.
- (e) "Nonconsensual Towing Carrier" or "NCT Carrier" means a wrecker service operator who or which engages in the towing or other removal of improperly parked vehicles and trespassing personal property (including, but not limited to, trespassing vehicles) from

private property.

(f) “Nonconsensual Towing Permit” or “NCT Permit” means a permit issued by the Department to a wrecker or towing service operator, authorizing removal of improperly parked vehicles and trespassing personal property from private property.

(g) “Normal Business Hours” means operating hours of a nonconsensual towing carrier as approved by the Department.

(h) “Receipt” means a document issued by the attendant to the owner of the vehicle stating all charges have been paid for the towing and storage of vehicle.

(i) “Secure Impoundment Facility” means a facility owned or leased by a towing company for the purposes of providing secure storage of towed vehicles.

(j) “Tow” or “towing” means to utilize any automotive vehicle to pull, to load and carry or otherwise to transport another automotive vehicle or automotive vehicle trailer over a public highway or road, except that transportation by an automobile transport vehicle with a capacity of three (3) or more vehicles shall not be included in the definition of tow or towing, no matter how many vehicles such automobile transport vehicle is transporting at any given time.

(k) “Wrecker” means an automotive vehicle with hoisting apparatus and equipment for towing vehicles. The term “wrecker” also includes any vehicle otherwise equipped and used for the purposes of towing vehicles.

(l) “Wrecker” or “towing service operator” means the person or entity operating or in control of the provision of wrecker or towing services to the public or to property owners and shall include all officers or managers of any such services.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled “Definitions” adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.02 Procedures.

(1) Before any wrecker service shall transport vehicles in nonconsensual towing on or over any public highway of the State of Georgia, it shall first secure a nonconsensual towing permit from the Department by making application on forms supplied by the Department and paying an annual filing fee of \$300.00. Such filing fee shall accompany the application, which shall not be complete and ready for favorable Department action until such fee is paid; and such fee is nonrefundable upon Department denial of the application, applicant’s withdrawal of the application or for any other reason. The permit shall be issued on an annual basis.

(2) The Department shall issue a nonconsensual towing permit if the application is complete and the applicant demonstrates the willingness and ability to comply with the laws of Georgia and the rules and regulations of the Department related to NCT Carriers.

including, but not limited to, secure impoundment facility, the maximum rate tariff, and with Department insurance and safety requirements.

(3) The Department may refuse to issue a permit where the applicant has failed to show compliance with the applicable laws of Georgia and the rules and regulations of the Department. The applicant shall be entitled to a hearing to contest the denial upon written request made within 30 days of the date of denial.

(4) Permits issued pursuant to this authority shall be valid except as otherwise provided herein, from the date of issuance through midnight of the expiration date shown on the permit, unless revoked, suspended or amended. There is no grace period. Failure to renew a permit within the permit's 12 month life shall result not only in the expiration of such permit, but also in the holder of such expired permit having to re-apply for a new permit in order to resume conducting nonconsensual towing operations after such expiration date.

(5) Nonconsensual towing permits shall be posted and kept in a conspicuous place at the main office of the wrecker service to whom such permit is granted. Copies of NCT permits shall be carried in the cab of any wrecker or tow truck operated under such permit.

(6) Applications to renew a permit must be submitted on a form designated by the Department. Renewal applications should be submitted no sooner than 30 days and no later than 10 days prior to the expiration date of the permit.

(7) The Department may, at any time after notice and an opportunity to be heard, suspend, revoke, alter, or amend any permit issued under these rules if it shall appear that the holder of the permit has violated or refused to observe any of the lawful and reasonable orders, rules or regulations prescribed by the Department, regulations of the Public Service Commission existing on July 1, 2012, the provisions of Title 44 or Title 40 of the Official Code of Georgia, or any other law of this state regulating or taxing motor vehicles.

(8) In the event of a change of name or ownership by the holder of a nonconsensual towing permit (including acquisition of controlling interest in a corporate entity), application for a new permit shall be made to the Department and the old permit surrendered to the Department before another permit can be issued to the new owner(s). The application for a permit by a new owner shall be made in the same manner as for an original nonconsensual towing permit and the fee shall be the same as for an original permit.

(9) Any nonconsensual permit issued by the Department shall not be assignable or transferable to any other person, firm, corporation or other entity.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Procedures" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.03 Fees Charged for Nonconsensual Towing.

(1) Any wrecker service engaged in the business of providing nonconsensual towing services shall not charge the owner or operator of any towed motor vehicle more than the maximum rates published in the Nonconsensual Towing Maximum Rate Tariff prescribed by the Department. No storage fees shall be charged for the first 24-hour period from the time the motor vehicle is removed from the property. The fees stated in the maximum rate tariff shall be all inclusive. No additional fees may be charged for the use of dollies, trailers, lifts, slim jims or any other equipment or service. Only charges or rates for storage and removal that are approved by the Department and contained in the Department's Maximum Rate Tariff for Nonconsensual Towing shall be billed or collected by the wrecker service for towing or storage services; and it is a violation of this Rule for any wrecker service to bill or collect fees or charges which are not expressly permitted by such Maximum Rate Tariff.

(2) The fees stated in paragraph one of this rule shall be payable, at the choice of the vehicle owner or payee, by cash, commonly-recognized travelers checks, money orders, certified checks or cashier's checks. Carriers may accept debit cards or credit cards but shall not charge an additional fee.

(3) No additional charges shall be assessed for storage of the vehicle once the vehicle has been claimed and payment is tendered to the towing company in the amount specified on the receipt and the vehicle has been removed from the impoundment facility. The receipt issued by the wrecker or towing service to the customer, and such service's office copy of such receipt, must reflect all fees collected for the redemption of the vehicle.

(4) The Maximum Rate Tariff may be reviewed and changed by the Department after considering the current cost for removal and storage of vehicles from personal property and other pertinent information.

(5) No storage fees may be charged or collected by any wrecker service or tow truck operator for days on which the impound lot where a towed vehicle is stored is closed or otherwise unavailable to the vehicle owner for redemption.

(6) Towing and storage firms found by the Department to be in violation of these Transportation Rules or Chapter 1 of Title 40 of the Official Code of Georgia shall not be permitted to charge or collect fees for nonconsensual towing.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Fees Charged for Nonconsensual Towing" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.04 Vehicle Not Towed Upon Operator Returning.

(1) The operator or driver employed by a wrecker service summoned to tow away any vehicle from private property shall not tow the vehicle away and shall not charge any fee

if the operator or owner of the vehicle returns, produces the ignition key to the vehicle and immediately removes the vehicle from the private property.

(2) If the vehicle has been hooked with hoisting apparatus, including wheel dollies, or loaded by the wrecker service and the vehicle has not left the premises, the vehicle shall be released and the operator's fee as prescribed in the Maximum Rate Tariff may apply. A receipt containing the date and time of the release of the vehicle, total amount charged, location of the private property, wrecker service's name, address, and telephone number shall be issued to the owner/operator of the vehicle.

(3) Once the wrecker service has left the location to which it was summoned, charges may be assessed in accordance with the Maximum Rate Tariff. The operator's fee, as described in paragraph two, shall not apply after the vehicle has left the premises.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Vehicle Not Towed Upon Operator Returning" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.05 Signs Specifications.

(1) Owners of private property shall be required to place signs at each designated entrance to a parking lot or parking area where parking prohibitions apply. Where there is no designated entrance, such signs shall be posted so as to be clearly visible from each and every parking space. Such signs shall be a minimum of 12 inches by 18 inches with a minimum of ¾ inch lettering. The words "Private Parking" shall be printed in Bold with a minimum of 1½ inch lettering.

(2) Such signs located at a designated entrance to a parking lot shall be at least four feet above the site grade. Where there is no designated entrance, such signs shall be six feet above the site grade. Posted signs must be free of any natural or man-made interference and be clearly visible.

(3) Such signs shall also include the following:

- (a) A warning that unauthorized vehicles will be towed;
- (b) Towing company name, address, and telephone number and impound lot location where towed vehicles may be retrieved;
- (c) Towing fees and daily storage fees;
- (d) Hours of Operation; and
- (e) Method of payment shall be as specified in Rule 570-6-1-.03(2).

(4) No vehicle shall be relocated from private property which does not, at the time of the tow and for at least 24 hours prior thereto, have signs posted which are in substantial compliance with the provisions of paragraphs (1) through (3) above. The provisions of this section shall not apply to owner(s) of private residential property containing four or less residential units.

(5) All signs must be removed from private property within 15 days after the termination of the contract or authorization from the property owner or agent is withdrawn.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Signs Specifications" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.06 Authorized Attendant.

(1) An attendant must be available at the impoundment facility during normal business hours to provide reasonable access to any towed vehicle six days of each week. The attendant must be available by phone 24 hours per day. The attendant shall have the authority to release any impounded vehicle upon the owner meeting the legal requirements for release. Any person claiming a vehicle impounded under the nonconsensual towing permit shall produce evidence of such person's identity and ownership or right of possession and shall pay all towing charges and storage fees which shall have accrued with respect to the vehicle. No storage fees will be charged for any days the secure impoundment facility is closed and the owner is unable to claim the vehicle.

(2) The vehicle owner or owner's agent shall produce a valid driver's license plus an ignition key which operates the vehicle, and evidence of ownership such as a certificate of title, a valid and current registration card, bill of sale, or a lease or rental contract.

(3) A receipt listing the specific charges for towing and storage of the vehicle shall be issued to the owner or agent claiming the vehicle and the attendant shall retain a copy of the receipt. The receipt must be signed by the owner or agent claiming the vehicle and by the attendant. Such receipt shall identify the vehicle and shall become part of the wrecker service's record.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Authorized Attendant" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.07 Records and Reports.

(1) Upon impoundment of any vehicle, the wrecker service shall maintain records, which shall include the following information:

- (a) Date and time of initial towing,
- (b) Place of initial towing,
- (c) Date and time of arrival at the impound lot,
- (d) Date and time of release to the owner,
- (e) Name of the towing company driver and helper,
- (f) Cost for towing of the vehicle,
- (g) Cost of storage of the vehicle, and
- (h) Any other authorized applicable charges with reference to Department's

Nonconsensual Towing Maximum Rate Tariff provisions authorizing such fees or charges.

(2) The records shall be maintained at a location where any Department representative may review in person during normal business hours. All wrecker companies shall provide to the Department a current telephone number of the person responsible for releasing the vehicles.

(3) All records required by these rules shall be preserved for a period of three years, unless otherwise specified by the Department.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Records and Reports" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.08 Secure Impoundment Facility.

(1) A wrecker service authorized to conduct nonconsensual towing by the Department must maintain a secure storage area for towed vehicles in the county where the tow operator's office (as listed with the Department) is located, unless otherwise authorized by the Department.

(2) The wrecker service must provide for effective and efficient security for the lot at all times. The storage lot must be fenced with a minimum of six feet of fencing, lighted, and equipped with a lock or enclosed building.

(3) Impounded vehicles shall be delivered to the wrecker service's secure impoundment facility in a timely manner. No wrecker service shall utilize "drop zones" or leave impounded vehicles at any impound lot or other location that has not been approved by the Department for use by the wrecker service making such tow or removal.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Secure Impoundment Facility" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.09 Public Liability and Property Damage Insurance.

(1) A wrecker service issued a permit to conduct nonconsensual towing must maintain a commercial insurance policy with the minimum liability insurance coverage prescribed by the Department on all vehicles used in its business in intrastate commerce (origin and destination wholly within the state) as follows:

- (a) \$100,000 limit for bodily injury to or death of one person
- (b) \$300,000 limit for bodily injuries to or death of total persons in one accident
- (c) \$50,000 loss or damage in any one accident to property of others

(2) Garage Keeper's Legal Liability: Liability insurance, which covers stored vehicles and contents, must be maintained on the impound or storage lot(s) sufficient to cover the actual value of all stored vehicles towed or removed to such lot or storage facility pursuant to O.C.G.A. § 44-1-13. The minimum amount of garage keeper's or storage liability insurance for coverage of the stored vehicles and contents must be \$50,000.00.

(3) A copy of the Certificates of Insurance must be furnished to the Department on an annual basis. A 30-day advance cancellation notice must be provided to the Department prior to any such insurance cancellation becoming effective. Insurance filings with the Department must be on current forms prescribed by the Department. No lapse in insurance coverage will be allowed.

(4) A permit issued by the Department is in effect only while the wrecker service is in compliance with all requirements for filing proof of insurance.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Public Liability and Property Damage Insurance" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-10 Office Requirements.

(1) A wrecker service must maintain normal business hours and a listed public business telephone number. A wrecker service may maintain a maximum of two telephone numbers to be called for dispatching calls.

(2) All wrecker services will provide reasonable access to any towed vehicle six (6) days per week.

(3) A wrecker service must maintain proof of registration for each vehicle with the Department and comply with the Department's safety rules and regulations as provided in these Rules and Chapter 1 of title 40 of the Official Code of Georgia.

(4) A wrecker service must maintain and provide to the Department upon request a list of all personnel operating wrecker equipment, as well as a current Motor Vehicle Report on each driver.

(5) Drivers must maintain a valid driver's license of the appropriate class and with the appropriate endorsements required to operate the wrecker service's vehicles under Georgia law.

(6) It shall be unlawful for a wrecker service to engage in removal of vehicles without an authorized contract signed by the owner or other authorized agent for property owner and the towing company in the form prescribed by the Department. A copy of the contract shall be made available to the Department representatives, upon request. The contract must contain the name, address and phone number of the respective towing company, and the location of the impoundment facility, hours of operation, and the cost for removal of the vehicle and the charges for storage of the towed vehicle. The contract must also contain the names and contact number(s) of the person(s) authorized to request the

removal of a vehicle from said property.

(7) Each and every requested nonconsensual towing movement requires a request on the day the removal takes place from the real property owner or his contractually-designated agent. The request may be by telephone call, facsimile letter or e-mail message to the wrecker service. The request must specifically identify and request removal of the vehicle or vehicles to be towed or removed. The real property owner or his contractually-designated agent must receive an original written tow authorization or tow bill dated and signed on the date of the tow by the real property owner or such property owner's designated agent. The tow authorization or tow bill may be transmitted and returned in person at the scene of the tow, by facsimile or by email, on the date of the tow, on forms prescribed by the Department. The tow authorization or bill must be signed by the real property owner or contractually-designated agent and shall include:

1. The name of the business or property,
2. The name and title of the real property owner or contractually designated agent,
3. The name of the party who requested the removal,
4. The specific location of the requested removal,
5. Vehicle identifying information: make, model, color, license plate state and number, and
6. For authorizations transmitted by email, a statement that the transmittal serves as authorization from the business owner to proceed with removal.

The wrecker service shall maintain for three years copies of telephone records, faxes and e-mail messages requesting removal as proof of the time and date such removal was requested, as well as the signed authorization for removal from the property owner or such owner's agent.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Office Requirements" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.11 Equipment.

(1) Wrecker services engaged in transporting vehicles in nonconsensual towing must apply for and maintain a Georgia Intrastate Motor Carrier Registration (GIMC) or the Unified Carrier Registration (UCR), as applicable, in accordance with O.C.G.A. § 40-2-140.

(2) Each vehicle operating under authority of a nonconsensual towing permit must carry a copy of the permit in the cab of the vehicle. The copy shall be presented to any investigator or enforcement officer of the Department upon request.

(3) Vehicles utilized in nonconsensual towing shall be distinctly marked and identified with the name of the motor carrier and motor carrier identification number (GA DOT or USDOT number). The size, shape and color of such marking shall be in compliance with Title 49, CFR, Part 390.21.

(4) All vehicles utilized by the wrecker companies for nonconsensual towing must be equipped with the following:

- (a) Valid license plate,
- (b) Fire extinguisher,
- (c) Stopped vehicle warning device, and
- (d) Tow away lamps (tail, stop and turn signal lights for vehicles being towed).

Augmentation of equipment by an NCT Carrier must comply with the Motor Carrier Leasing Rules contained in rules of the Department and the Public Service Commission.

Authority O.C.G.A. Sec. 40-1-54, 44-1-13. **History.** Original Rule entitled "Equipment" adopted. F. June 10, 2008; eff. June 30, 2008.

570-6-1-.12 Penalties.

The civil penalties for violation of these rules and the rules of the Public Service Commission existing on July 1, 2012, may be imposed after notice and hearing unless the violator consents in writing to such penalties. Unless lower penalties are specified in O.C.G.A. § 44-1-13 or other state or federal statute, the maximum civil penalty shall be as provided in O.C.G.A. § 40-1-56.

Authority O.C.G.A. Secs.40-1-54,40-1-55, 40-1-56, 44-1-13, **History.** Original Rule entitled "Penalties" adopted. F. June 10, 2008; eff. June 30, 2008.