

ORDINANCE NO. 299A

AN ORDINANCE AMENDING CITY OF MAGNOLIA, TEXAS, ORDINANCE NO. 299, PASSED AND APPROVED THE 9TH DAY OF APRIL 2002, AND BEING AN ORDINANCE AUTHORIZING THE EXECUTION OF AGREEMENTS WITH WRECKER OWNERS AND OPERATORS FOR POLICE AUTHORIZED TOWS, BY STRIKING FROM SECTION 2 THEREOF THE DEFINITION OF "VEHICLE STORAGE FACILITY" AND SUBSTITUTING THEREFOR A NEW DEFINITION OF "VEHICLE STORAGE FACILITY," AND BY STRIKING ALL OF SUBSECTION B OF SECTION 3 THEREOF AND SUBSTITUTING THEREFOR A NEW SUBSECTION B; PROVIDING THAT WRECKER OWNERS AND OPERATORS PERFORMING POLICE-AUTHORIZED TOWS SHALL DELIVER TOWED VEHICLES TO STORAGE FACILITIES LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OR WITHIN ONE-HALF MILE THEREOF; PROVIDING THAT WRECKER OWNERS AND OPERATORS DESIRING TO PERFORM POLICE-AUTHORIZED TOWS SHALL PAY AN APPLICATION FEE OF \$15.00; PROVIDING OTHER MATTERS RELATING TO THE SUBJECT; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

\* \* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

Section 1. City of Magnolia, Texas, Ordinance No. 299, passed and approved the 9th day of April 2002, and being AN ORDINANCE AUTHORIZING THE EXECUTION OF AGREEMENTS WITH WRECKER OWNERS AND OPERATORS FOR POLICE AUTHORIZED TOWS, is hereby amended by striking from Section 2 thereof the definition of "Vehicle storage facility" and substituting therefore a new definition to provide as follows:

*"Vehicle storage facility shall mean a motor vehicle storage facility situated within the corporate limits of the City, or within one-half (1/2) mile thereof, that is operating under a current and valid license granted pursuant to the Vehicle Storage Facility Act (Texas Occupation Code, Section 2303.001, et seq.) and that is in compliance with all State and City rules and regulations governing vehicle storage facilities."*

**Section 2.** Said City of Magnolia, Texas, Ordinance No. 299 is hereby further amended by striking all of Subsection B of Section 3 thereof and substituting therefor a new Subsection B to provide as follows:

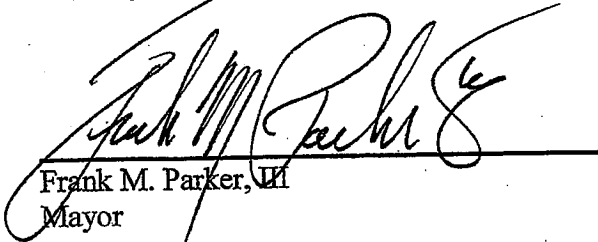
"B. Any person desiring to enter into a contract with the City under this section, to perform police-authorized tows, shall make application therefor to the City Secretary. A nonrefundable application fee of Fifteen Dollars (\$ 15.00) per wrecker shall accompany such application."

**Section 3.** All ordinances or parts or ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.


**Section 4.** Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

**Section 5.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED AND ADOPTED this 9<sup>th</sup> day of July, 2002.

  
Frank M. Parker, III  
Mayor

ATTEST:

  
Jane Hawke Miller  
City Secretary

## AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally appeared Elizabeth Davis who on her

**CITY OF MAGNOLIA  
ORDINANCE 299A**

An Ordinance amending City of Magnolia, Texas, Ordinance No. 299, passed and approved the 9th day of April 2002, and being an ordinance AUTHORIZING THE EXECUTION OF AGREEMENTS WITH WRECKER OWNERS AND OPERATORS FOR POLICE AUTHORIZED TOWS, by striking from Section 2 thereof the definition of "Vehicle Storage Facility" and substituting therefor a new definition of "Vehicle Storage Facility," and by striking all of Subsection B of Section 3 thereof and substituting therefor a new Subsection B; providing that wrecker owners and operators performing police-authorized tows shall deliver towed vehicles to storage facilities located within the corporate limits of the city or within one-half mile thereof; providing that WRECKER OWNERS & OPERATORS DESIRING to perform police-authorized tows shall pay an application fee of \$15.00; providing other matters relating to the subject; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; providing a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; and providing for severability.

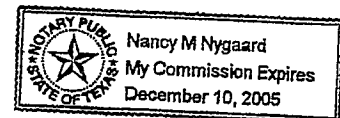
I am the Bookkeeper for the TRIBUNE a newspaper published in Harris County, Texas and now the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be copy, as the same appeared in such newspaper in the respective issues of:

Aug. 14, 2002

                    , 2002

Elizabeth Davis, Billing Department

Subscribed and sworn to this 23 day of August, 2002



ORDINANCE NO. 299

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS  
AUTHORIZING THE EXECUTION OF AGREEMENTS WITH  
WRECKER OWNERS AND OPERATORS FOR POLICE AUTHORIZED  
TOWS; CONTAINING OTHER PROVISIONS RELATED TO THE  
SUBJECT; PROVIDING A PENALTY OF AN AMOUNT NOT TO  
EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION  
HEREOF; REPEALING ALL ORDINANCES OR PARTS OF  
ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND  
PROVIDING FOR SEVERABILITY.

\* \* \* \* \*

WHEREAS, the United States Congress adopted certain trucking deregulation measures as part of the Federal Aviation Administration Act of 1994 (the "Act"), which became effective on January 1, 1995; and

WHEREAS, the Act prohibited cities from enacting or enforcing laws or regulations related to the prices, routes and services of motor carriers; and

WHEREAS, auto wreckers are included within the definition of motor carriers for the purposes of such prohibition; and

WHEREAS, an amendment to the Act, effective January 1, 1996, authorizes cities to regulate the price charged for towing a motor vehicle if such tow is performed without the prior consent or authorization of the owner or operator of the motor vehicle; and

WHEREAS, the City, as a market participant, is authorized to establish specifications for police authorized non-consent towing services, to ensure reasonably priced, reliable, and efficient performance of such towing service; now therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:**

**Section 1.** The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

**Section 2.** **Definitions.** For the purposes of this Ordinance, the following words, terms and phrases shall have the meanings ascribed thereto:

*Auto wrecker* shall mean any automobile, truck or other motor vehicle used for the purpose of towing, carrying, pushing, or otherwise transporting any wrecked or disabled motor

vehicle from one place to another for any purpose, including but not limited to the purpose of wrecking, storing or repairing the vehicle. The term "auto wrecker" shall not be construed to include a service car or other vehicle not equipped with mechanical devices for transporting wrecked vehicles and not used for such purpose, such as service cars equipped with compressed air containers and tools for performing minor repairs not involving towing or transporting of wrecked or disabled vehicles or vehicles used by citizens on rare occasions to push or pull other disabled vehicles. This exception shall not authorize evasion of this Ordinance and if any vehicle, although not equipped with devices primarily used for towing wrecked or disabled vehicles, is actually used for such purposes through the means of ropes, chains or otherwise, the same shall be considered an auto wrecker within the terms of this Ordinance.

*Heavy-duty wrecker* shall mean an auto wrecker with a manufacturer's rated carrying capacity of not less than 6,000 pounds. Except where a distinction is made, the term "auto wrecker" shall include a "heavy-duty wrecker."

*Wrecker* shall mean an auto wrecker.

*Wrecker driver* shall mean a person who operates an auto wrecker on the streets of the City, whether on his own account or in the employ of another.

*Police-authorized tow* shall mean a non-consent tow authorized by any police officer of the City rather than the owner or operator of the vehicle under circumstances of recovery of a stolen vehicle, removal of an abandoned, wrecked, illegally parked or disabled motor vehicle, or a custodial arrest where the owner or operator of the vehicle is incapable of making arrangements for removal of the vehicle, or any other circumstances in which a police officer authorizes the towing of a motor vehicle in connection with the officer's official duties and

the owner or operator is not present or is not capable of making a determination with respect to the removal of a vehicle.

*Consent tow* shall mean the towing of a motor vehicle with the consent of the owner or operator of the vehicle.

*Non-consent tow* shall mean the towing of a motor vehicle without the consent of the owner or operator of the vehicle.

*Vehicle storage facility* shall mean a motor vehicle storage facility situated within the City that is operating under a current and valid license granted pursuant to the Vehicle Storage Facility Act (Texas Occupation Code, Section 2303.001, et seq.) and that is in compliance with all State rules and regulations governing vehicle storage facilities, as well as all City ordinances affecting same.

### **Section. 3. Police-Authorized Tows.**

A. No auto wrecker may perform police-authorized tows except upon authorization of an agreement executed under this section.

B. Any person desiring to enter into a contract with the City under this section, to perform police authorized tows, shall make application therefor to the City Secretary. A nonrefundable application fee of Fifty Dollars (\$ 50.00) per wrecker shall accompany such application.

C. The Chief of Police may execute agreements on behalf of the City to perform police-authorized tows upon determination that the applicant for such contract satisfies the requirements of this Ordinance and the terms, conditions, and specifications of the police authorized tow agreement. The Chief of Police shall make or cause to be made such investigation of the applicant and wrecker driver(s) to determine their respective qualifications and fitness to

properly drive, load, and operate an auto wrecker in a safe and proper manner for the protection of property and the welfare of the citizens of the City. The right to enter into such agreements shall be extended on a uniform basis to all eligible persons who operate wreckers. The agreements shall be upon such terms and conditions as approved by the City Council.

D. All agreements enter into shall expire on December 31st of each calendar year and must be renewed by January 01st of the next year. This will also require a new application be completed along with the Fifty (\$50.00) Application fee.

E. An application for a Police Authorized Tow Agreement may be denied by the Chief of Police for good cause, including, but not limited to, the following reasons:

1. The applicant has not been in compliance with the requirements of a prior police authorized tow agreement or this Ordinance at any time;
2. The applicant or wrecker driver has committed any violation of State law regulating auto wreckers;
3. The applicant has committed any violation of any ordinance of the City regarding auto wreckers;
4. The applicant or wrecker driver has violated any rule or regulation or lawful order issued by the authority of the Chief of Police;
5. There have been three (3) or more violations of any ordinance of the City regarding auto wreckers within any one (1) year period by any one (1) driver operating a wrecker of the applicant or by any other agents or employees of the applicant;
6. There have been four (4) or more moving violations of the motor vehicle laws of the State within any one (1) year by any one (1) driver while operating a wrecker of the applicant;

7. The applicant or wrecker driver supplied false or incomplete information to obtain or maintain a police authorized tow agreement; or

8. The applicant or wrecker driver has been convicted of a felony within the last three (3) years, placed on probation, or convicted of a crime involving moral turpitude within ten (10) years.

E. The City shall not enter into an agreement on behalf of the City with any owner or operator if the owner or operator or any employee thereof (including partners of a partnership and stockholders of a corporation) has had an agreement hereunder terminated for cause within the preceding five (5) years. The foregoing provision shall apply to agreements that are not renewed or are terminated under threat of termination for cause in the same manner as to those that have actually been terminated for cause.

F. The applicant who is denied a police-authorized tow agreement under this Section 5 F shall have the right to appeal the decision to the City Council within ten (10) days, which appeal shall be perfected by delivering notice of appeal, in writing, to the City Secretary, stating that an appeal of the decision is desired and the facts regarding same. The City Secretary shall schedule a hearing before the City Council as soon as practicable after receiving the notice of appeal. After hearing the appeal the City Council shall sustain or reverse the decision. If no appeal is made within the time provided above, the decision of the shall be final.

**Section 4.**     **Parking Upon Arrival.** Whenever an auto wrecker arrives at a place where a motor vehicle is wrecked or disabled, the auto wrecker driver shall park his vehicle in such a manner as not to interfere with traffic. No auto wrecker shall be parked within one hundred feet (100') of a wrecked or disabled vehicle unless performing a consent tow or otherwise directed by a police officer at the scene.



**Section 5.     Obedience to, Interference with Police Officers.**

A.     All auto wrecker drivers arriving at the scene of an accident or a disabled vehicle shall obey all lawful orders given them by any police officer at the scene and shall not interfere with such police officer in the performance of his duties.

B.     A wrecker driver shall not remove any wrecked or disabled vehicle from the scene of an accident or load or attach an auto wrecker to a wrecked or disabled vehicle until the police officer in charge of the scene has completed the investigation and authorized the wrecker driver to remove the vehicle.

**Section 6.     Designation of Towing Company.**

A.     Upon arrival at the scene of a wrecked or disabled vehicle the police officer shall determine if a police-authorized tow is necessary. If a police-authorized tow is necessary, the police officer shall advise dispatch to place a fifteen (15) minute wrecker call for the city of Magnolia wreckers only.

B.     If the owner or driver of a motor vehicle that is wrecked or disabled has a wrecker preference, that request will be honored if it would not cause undue delay and immediate towing is unnecessary. Any wrecker or towing company may tow the vehicle at the owner's or operator's request as long as it has a valid State of Texas tow tag and cab card. If the wrecked or disabled vehicle has any part or portion thereof upon the roadway, the auto wrecker responding to the owner's or operator's request shall have fifteen (15) minutes to arrive at the scene and remove the vehicle, or such shorter period of time if in the discretion of the police officer on the scene such shorter period of time is necessary to protect the safety and welfare of the public; otherwise, the vehicle may be towed pursuant to a police-authorized tow.

**Section 7.     Charges, Police-Authorized and Non-Consent Tows.**

A.     The standard auto wrecker service charge for towing a vehicle as a non-consent tow or as a police-authorized tow to a vehicle storage facility as defined herein or to the place of business of the auto wrecker shall not exceed those of normal and customary charges as reflected on a printed receipt reflecting the normal charges for their services. This charge shall apply whether the tow is performed during the day, at night, on a Saturday or Sunday, or on a holiday. If this requires that a vehicle is to be uprighted or wenched as a result of an accident and the owner is not able to designate a specific wrecker service this additional fee shall be performed at the normal and customary rate. If the police department requires the vehicle to be moved from the location to which it was originally towed to another location within the City, an additional fee may be charged for transferring the vehicle

B.     The service charge for a heavy-duty wrecker performing police-authorized or non-consent tows where the services of a heavy-duty wrecker are required shall not exceed those of the normal and customary rate as reflected on a printed receipt. The time for a heavy-duty wrecker shall begin at vehicle hook-up and end when the vehicle is delivered to the vehicle storage facility or designated location. An additional fee may be charged for uprighting a wrecked vehicle.

C.     All charges shall be listed on the wrecker invoice and the wrecker owner or operator shall maintain a separate file for invoice copies pertaining to non-consent and police-authorized towing services at the owner's or operator's place of business for two (2) years from the invoice date. Any officer of the police department may inspect such invoice(s) during regular business hours. Every invoice required to be kept under this section shall contain the towed vehicle's description by make, model, year, license number, and name of the wrecker driver in

addition to charges made. Every invoice on non-consent tows shall include the above information along with the name, address, and phone number of the person authorizing the tow, accompanied with the reason the vehicle was towed, and the name, street address, and telephone number where the vehicle was taken for storage. Every invoice on police-authorized tows shall include the name and badge number of the police officer that authorized the tow."

**Tows not considered Police-Authorized Tow shall not require an executed agreement between the Wrecker Company and the City of Magnolia.**

**Section 8. Consent Tows.**

A. An owner or person in possession of a motor vehicle may at any time request that their vehicle be towed to any location, for any purpose and may use any auto wrecker they desire to tow their motor vehicle.

B. The towing of a vehicle authorized by, and at the direction of, a registered lienholder incidental to a lawful repossession shall be considered a consent tow and the provisions of subsection A of this section shall apply. The lienholder or his agent shall make an oral report to the police department within one (1) hour of the time the vehicle was towed which shall include the following information:

1. The license plate of the towed vehicle;
2. Vehicle identification number of the towed vehicle;
3. The year, make, model, and color of the towed vehicle;
4. The name, address and telephone number of the person authorizing the tow and the lienholder requesting the vehicle to be repossessed; and

5. The location from which the vehicle was towed, the date and time of the tow, and the name, street address, and telephone number where the vehicle was taken for storage.

**Section 9. Non-Consent Tows.**

Whenever a person other than the registered owner or operator of a motor vehicle authorizes the tow of a vehicle, that person or his agent shall make an oral report to the police department within one (1) hour of the time the vehicle was towed which shall include the following information:

- (1) The license plate of the towed vehicle;
- (2) The vehicle identification number of the towed vehicle;
- (3) The year, make, model, and color of the towed vehicle;
- (4) The name, address and telephone number of the person authorizing the tow; and
- (5) The location from which the vehicle was towed, the date and time of the tow, and the name, street address, and telephone number where the vehicle was taken for storage.

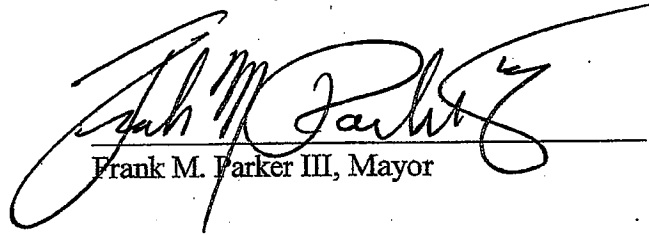
**Section 10.** Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed five hundred dollars (\$500.00). Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

**Section 11.** All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 12.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be

adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED on this 09th day of April, 2002.



Frank M. Parker III, Mayor

ATTEST:



Jane Miller, City Secretary

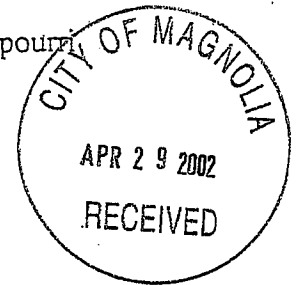
**Attachment (A)**

**Requirements to enter a working agreement with the City of Magnolia for Police Authorized Tows.**

- 1) The fifty-dollar application fee has been paid to the City Secretary for each wrecker the Tow Company intends to register signed by the owner of said company or if the company is a corporation the signature of the president and attested to by the secretary of such corporation.
- 2) They provide the name of the Tow Company along with the name and address of the owner under which the business is to be operated.
- 3) The location of their storage facility.
- 4) The make, model, vehicle identification number, and DOT number assigned to them.
- 5) Information on each driver who will be making such tows showing their full name address and Drivers license number along with the driver's signature of authorization for a complete background check.
- 6) A copy of their liability insurance for each truck registered as well as their storage facility.
- 7) Each wrecker will then be inspected by the police chief or his designee to be sure that they have all of their required equipment and that it is in proper working order.
- 8) Storage facilities will conform to all city and state requirements. These facilities will be fenced so as to screen the storage lot from view, and constructed in such a manner as to prevent the entry of any unauthorized persons. All storage lots shall be kept free of weeds and trash as not to present a health hazard.

AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally appeared the Potpourri  
Publisher who on his/her oath stated:



**CITY OF MAGNOLIA  
ORDINANCE NO. 299**  
AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, REGULATING AUTHORIZING THE EXECUTION OF AGREEMENTS WITH WRECKER OWNERS AND OPERATORS FOR POLICE AUTHORIZED TOWS; CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

I am the publisher of the THE POTPOURRI, a newspaper published in Montgomery County, Texas and know the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be a copy, as the same appeared in such newspaper in the respective issues of:

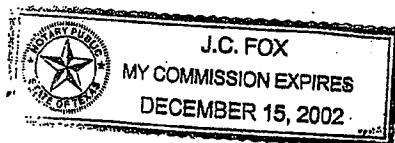
April 17, 2002

Alan Smith  
Publisher

\_\_\_\_\_, 2002

Subscribed and sworn to this 26 day of April, 2002

J.C. Fox  
Notary Public, Montgomery County, Texas



12-15-02  
Commission Expires