

City Council Workshop

Agenda Item #5

October 12, 2016

Amendments to Chapters 14 and 15 of  
the Code of Ordinances regarding  
Towing and Wreckers

I have attached a copy of a memorandum along with proposed amendments to Chapters 14 and 15 from Chief Ed Googins. The amendments to Chapter 14, "Licenses, Permits and Business Regulations Generally" can be found in Sec. 14 – 8(b), Standards for Denial, Suspension or Revocation; Background checks and amendments for Chapter 15, "Motor Vehicles and Traffic" will be found in Article VIII, Wreckers and Vehicle Towing.

Chief Googins will be at Wednesday's meeting to answer any additional questions the City Council may have.



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Interim City Manager



**POLICE DEPARTMENT**

EDWARD J. GOOGINS  
CHIEF OF POLICE

AMY J. BERRY  
DEPUTY CHIEF

To: Donald Gerrish, Interim City Manager  
From: Edward J. Googins, Police Chief  
Date: September 9, 2016  
Ref: Wreckers and Vehicle Towing Ordinance Revisions

The attached proposed amendments to Chapter 14 (Licenses, Permits and Business Regulations Generally), Article I. In General and Chapter 15 (Motor Vehicles and Traffic), Article VIII. Wreckers and Vehicle Towing are being made after a department review of the ordinance following two incidents involving ordinance violations that were acted on by the City Clerk. For purposes of reference, I have attached copies of the final decisions in those matters.

The initial process to update the Chief's Rules (Sec. 15-272) began in May and involved a meeting with the tow operators to solicit their input. The City Manger then requested I meet with the City's Corporation Counsel, Sally Daggett, to recommend what should be incorporated into the ordinance and what should be in the Chief's Rules. In late June, after that discussion, drafts were provided by the Corporation Counsel for further review. In August, Corporation Counsel provided the final draft and another meeting was held with the tow operators to go over the proposed changes, answer questions and solicit feedback.

The proposed changes include:

- requiring background checks on wrecker and towing business drivers
- prohibiting sworn South Portland Officers from being involved in a tow licensee's business
- identifying unacceptable conduct by operators, owners and employees
- prohibiting the use of alcohol or drugs during the course of business
- use of a vehicle inventory sheet to identify who the vehicle can be released to
- documentation of the release of the vehicle
- establishes a time limit to notify of changes in insurance, tow vehicles, storage locations or employees
- increases crash tows from \$100 to \$125
- increases other tows from \$85 to \$100
- notification to department when abandoned vehicle notification is sent to the Secretary of State
- allows only one business license to each legally organized business and business affiliates
- requires licensee to own or lease the equipment used by the licensee
- further explains unsatisfactory service

I look forward to the opportunity to discuss these proposed changes with the City Council as I feel they will allow for better oversight and give the licensees a needed increase in their fees for service.



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

JAMES H. GAILEY  
City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDER #95-15/16

District One  
CLAUDE V. Z. MORGAN

District Two  
PATRICIA A. SMITH

District Three  
EBEN C. ROSE

District Four  
LINDA C. COHEN

District Five  
BRAD FOX

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

WHEREAS, Sec. 15-283 of the Code of Ordinances sets forth the standards for suspension or revocation of a City-issued towing/wrecker business license; and

WHEREAS, Sec. 14-8 of the Code of Ordinances sets forth the general standards for suspension or revocation of a City-issued business license, which are in addition to the provisions of Sec. 15-283 of the Code of Ordinances; and

WHEREAS, Yaz Towing and Auto Repair has an annual City-issued license (#2069), issued on November 25, 2015 and set to expire on its own terms on December 6, 2016; and

WHEREAS, Payam Yazdanpanah is the sole proprietor of the licensee, Yaz Towing and Auto Repair (hereinafter collectively "Yaz"); and

WHEREAS, based on a series of incidents allegedly occurring over the weekend of Friday, December 11, through Sunday, December 13, 2015, involving Yaz's response to a private call for towing or wrecker service by Sierra-lynn Frost (the "Complainant"), the Police Chief sent a memo to the City Clerk, as the City official charged with the authority to issue and to suspend or revoke towing/wrecker licenses in South Portland, asking that a hearing be set to determine what happened during that time period and what, if any, sanctions should be imposed on Yaz; and

WHEREAS, on January 5, 2016, the City Clerk conducted a testimonial hearing pursuant to Sec. 15-283 and Sec. 14-8 of the Code of Ordinances to determine what happened during that time period and what, if any, sanctions should be imposed on Yaz; and

WHEREAS, at the January 5 hearing, all testimonial witnesses were sworn and testified: Mr. Yaz; the Complainant; her mother, Sharity Medrano; her father, Scott Frost; SPPD Officer Kaitlyn Thurlow; SPPD Officer Kevin Therriault; and

WHEREAS, at the January 5 hearing, Yaz also testified in rebuttal and all witnesses were subject to cross examination by Yaz and some questions from the City Clerk and her counsel; and

WHEREAS, at the January 5 hearing, certain exhibits were offered by the Police Department and Yaz that were considered by the City Clerk; and

WHEREAS, the City Clerk found that, on balance, the testimony of the Complainant, Ms. Frost, and her mother, Ms. Medrano, were more credible than not and that Mr. Yaz threatened them, without justification, as provided in their witness statements and their live testimony; and

WHEREAS, at the conclusion of the January 5 hearing, the City Clerk determined that the facts presented at the hearing constituted a violation by Yaz of Sec. 14-8(a)(3) of the Code of Ordinances, that is, misconduct in the licensed business that presented a direct threat to the public's health, safety and welfare; and

WHEREAS, at the conclusion of the January 5 hearing, the City Clerk decided that the appropriate penalty for Yaz's violation of the Code of Ordinances was as follows: (1) Yaz's name shall be removed from the City's tow list for the balance of its license year (until December 6, 2016), and (2) Yaz's right to operate his towing service in South Portland is suspended through June 30, 2016; and

WHEREAS, the City Clerk issued a written decision on January 6, 2016 and provided a copy to Yaz and the Police Chief; and

WHEREAS, Sec. 15-284 and Sec. 14-13 of the Code of Ordinances provide that an appeal of a suspension by the City Clerk may be taken to the City Council; and

WHEREAS, Yaz has timely appealed the suspension of his business license to the City Council; and

WHEREAS, if Yaz is dissatisfied with the decision of the City Council herein, he may appeal to Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

NOW, THEREFORE, the City Council finds that the City Clerk's January 6, 2016 decision to suspend Yaz's towing license should be

AFFIRMED    ~~REVERSED~~    ~~MODIFIED~~    *[circle one]*

for the following reason(s):

In her written decision of January 6, 2016 (the "Decision"), the City Clerk found that "on balance, the testimony of Sierra-Lynn Frost, the Complainant, and her mother, Sharity Medrano, was more credible than not and that Mr. Yazdanpanah threatened them, without justification." Therefore, the City Clerk determined that these facts constituted a violation of South Portland Code of Ordinances Sec. 14-18(a)(3) -- a

complaint of the licensee's business or professional conduct that is the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare.

Appellant makes several arguments:

1. That the December 16, 2015 Notice of Hearing (“Notice”) from the City Clerk did not indicate that Yaz Towing had the right to subpoena witnesses at the hearing and apparently alleges that the inability to subpoena witnesses affected its defense. However, there is no record that Payam Yazdanpanah (“Mr. Yaz”) raised this issue at the January 5, 2016 hearing, and neither the South Portland Code of Ordinances nor the City Charter authorizes the City Clerk to issue subpoenas for licensing hearings.

2. That the Notice states that the hearing would be limited to Sec. 15-283 and that none of the grounds for suspension are in Sec. 15-283. However, while the Notice says that the hearing is “pursuant to Sec. 15-283,” the Notice did not limit the hearing to that section. Further, Sec. 15-283 requires only that the City Clerk provide a notice containing a “generalized statement of complaint,” which it does. In addition, Sec. 14-8 provides that it applies “[i]n addition to any other specific provision of this Code authorizing action...”. Sec. 14-8 is part of the general towing/wrecking license, and Sec. 15-283 relates to the City’s tow list. Therefore, the City Clerk properly conducted the hearing under both Sec. 15-283 and Sec. 14-8. The record reflects that an attested copy of Sec. 15-283 was at the City Clerk’s hearing, although this was not required.

3. That there was no threatening by Mr. Yaz. Here, statements given by Complainant Frost and Ms. Medrano to the South Portland Police Department were before the City Clerk at the Jan. 5, 2016 hearing and constitute competent evidence to support the City Clerk’s findings of Mr. Yaz’s threatening and inappropriate conduct while carrying out his licensed business. The fact that cease harassment notices were sought supports the seriousness of the matter.

Therefore, the City Council concludes that the Decision in the matter of the suspension of the towing/wrecker license of Yaz Towing and Auto Repair is supported by substantial evidence, is not affected by error of law, is not arbitrary and capricious and does not constitute an abuse of discretion. The penalty is consistent with the City Clerk’s action in prior towing and wrecker license cases.

AND IT IS THEREFORE ORDERED that the appeal of Yaz is hereby

~~GRANTED, and the matter remanded to the City Clerk for further action.~~

  X   DENIED.

[Fiscal Note: \$0]

DATED: March 21, 2016



**OFFICE OF THE  
CITY CLERK**

EMILY CARRINGTON  
City Clerk

JESSICA HANSCOMBE  
Deputy City Clerk

KAREN L. MORRILL  
Assistant City Clerk

**NOTICE OF DECISION  
TOWING/WRECKER BUSINESS LICENSE HEARING**

Maietta Towing Company  
c/o Robert Maietta  
154 Pleasant Hill Road  
Scarborough, ME 04074

Pleasant Hill Auto Sales, Inc.  
c/o Robert Maietta  
300 Main Street  
South Portland, ME 04106

Dear Mr. Maietta:

This is to inform you that I have acted on the Police Department's request that I examine what, if any, sanctions are appropriate following a hearing on your towing/wrecker business license held on May 17, 2016. I make the following findings and conclusions:

**Findings of Fact**

1. Maietta Towing Company ("MT") has an annual City-issued license (#550171), issued on November 25, 2015 and set to expire on its own terms on November 20, 2016. As such, MT is listed on the Police Department's rotational tow list and authorized to perform tows when requested to do so by the South Portland Police Department ("SPPD"). The license is covered, in part, by the provisions of Article VIII of Chapter 15 of the South Portland Code of Ordinances (the "Code") and, in part, by the provisions of Article I of Chapter 14 of the Code. Robert Maietta is listed on the application form dated October 15, 2015 as the owner of the business. Two vehicles are associated with this license, a 2004 Sterling and a 2006 International (a 2 car carrier and a 1 ton wheel lift).
2. Pleasant Hill Auto Sales, Inc. ("PHA") has an annual City-issued license (#550237), issued on November 25, 2015 and set to expire on its own terms on November 20, 2016. As such, PHA is listed on the Police

Department's rotational tow list and authorized to perform tows when requested to do so by the SPPD. The license is covered, in part, by the provisions of Article VIII of Chapter 15 of the Code and, in part, by the provisions of Article I of Chapter 14 of the Code. Robert Maietta is listed on the application form dated October 15, 2015 as the owner of the business. Two vehicles are associated with this license, a 2006 F350 and a 2007 Peterbilt (a 2 car carrier and a 1 ton wheel lift).<sup>1</sup>

3. The two businesses, MT and PHA, list the same location as the business address: 300 Main Street in South Portland. The two businesses list the same location where vehicles are to be stored: 154 Pleasant Hill Road in Scarborough (a lot measuring 100' by 200'). The two businesses list the same location where an owner may claim his/her vehicle: 300 Main Street in South Portland. Robert Maietta serves as the front office manager for both companies.<sup>2</sup>
4. Based on the information set forth in a Police Department memorandum dated March 4, 2016 for an accident at the intersection of Westbrook Street and Broadway that occurred on October 19, 2015 and the subsequent towing(s) and billing(s) related to that accident involving MT/PHA's response to a Police Department call for towing or wrecker service to the accident scene, the Police Chief sent a memo to the City Clerk, as the City official charged with the authority to issue and to suspend or revoke tow truck licenses in South Portland. The Police Chief asked that a hearing be set to determine what happened related to that tow and what, if any, sanctions should be imposed on MT or PHA (see footnote 2 below) as a result of the tow and subsequent towing(s) and billing(s) related to that accident. A copy of the Police Chief's memo was admitted at the hearing as Exhibit 12. As required by the Code, notification was sent to MT/PHA, informing the companies and its owner of the hearing.<sup>3</sup>

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<sup>1</sup> Vincent Maietta testified at the May 17, 2016 hearing that MT/PHA has five trucks, but only four are listed on MT/PHA's license applications.

<sup>2</sup> Based upon a review of public records available from the State of Maine Secretary of State, neither MT nor PHA is a separate legal entity in Maine. Rather, MT and PHA appear to be "doing business as" names for the one legal entity that is recognized in Maine, Maietta Enterprises, Inc. ("Maietta Towing" used to be an assumed name for Maietta Foundations, Inc.) Maietta Enterprises, Inc. is the surviving entity that resulted from the merger of Maietta Enterprises, Inc.; GLM Associates, Inc.; Pleasant Hill Auto Sales, Inc.; Maietta Foundations, Inc.; and M7 Properties, LLC pursuant to Articles of Merger filed with the Secretary of State's Office on February 17, 2011 and effective on that same date.

<sup>3</sup> At the May 17, 2016 hearing, Vincent Maietta testified that he was the sole owner of both companies, MT and PHA. When the City Clerk asked about the discrepancy between his testimony and the license application forms that listed Robert Maietta as the owner of both companies, Vincent Maietta testified that he was now the owner and Robbie "probably" was an owner when the form was filled out in November and it "probably" was never fixed. He didn't know when the actual ownership transferred over to him. It is unclear who owns Maietta Enterprises, Inc., the only legal entity that is recognized in Maine.

5. The hearing was originally scheduled for April 15, 2016, but it was rescheduled to May 17, 2016 at MT/PHA's request so that MT/PHA could have more time to prepare for the hearing.
6. At the May 17, 2016 hearing, the Police Chief was present and represented by legal counsel not associated with the law firm that represents the City generally. A member of the City's law firm represented the City Clerk in this matter. Vincent Maietta, the brother of Robert Maietta, was present on behalf of MT/PHA at the hearing and was represented by legal counsel. Robert Maietta did not appear at the hearing.
7. At the outset of the hearing, the City Clerk read a prepared text, describing the procedural rules for the hearing. As provided for in those rules, the technical rules of evidence from court did not govern the hearing, but rather the standard from the Maine Administrative Procedures Act was adopted, providing that evidence would be allowed if it was the kind of evidence that reasonable people rely upon in the course of conducting serious affairs. The hearing was also videotaped.
8. All testimonial witnesses were sworn and testified in the following order: Vincent Maietta and SPPD Officer Paul Lambert. Both witnesses were subject to cross examination by counsel for the other party and to some questions from the City Clerk. Note that James Caron, the manager of Acme Body Shop ("Acme"), was initially sworn in as a witness but did not testify. Both parties wanted to call another witness when that witness was not present at the hearing: (a) the Police Department wanted to call Robert Maietta, but he did not attend the hearing; and (b) MT/PHA wanted to call James Caron, but he had already left the hearing. The City Clerk does not have subpoena power, and the parties' counsel apparently did not coordinate with one another about making witnesses available at the hearing. Responsibility for this apparent lack of communication about witness availability is on the parties, not the City Clerk. Due consideration was given to the fact that Mr. Caron was not available for cross examination. Robert Maietta's statements to the SPPD on February 10, 2016 and February 22, 2016 were recorded by the Watchguard system (see Exs. 17 & 18).
9. Admitted into evidence were eighteen (18) exhibits:
  - Ex. 1: A & T Towing tow slip 4118 dated 10/19/15
  - Ex. 2: PHA tow slip 61818 dated 10/19/15
  - Ex. 3: PHA tow slip 61756 dated \_\_/21/15
  - Ex. 4: SPPD Officer Lambert Report of Investigation dated 3/4/16
  - Ex. 5: SPPD witness statement of James A. Caron
  - Ex. 6: SPPD witness statement of Anastasia Filipovic
  - Ex. 7: SPPD witness statement of Lisa Hill

- Ex. 8: SPPD witness statement of Stephen Jordan
- Ex. 9: SPP Dispatch Call Log Call #152920382
- Ex. 10: Fax from State Farm Insurance dated 10/21/15
- Ex. 11: \$300 check to A & T Towing dated 10/20/15
- Ex. 12: Police Chief memorandum dated 4/1/16
- Ex. 13: PHA tow slips 61826 & 61821
- Ex. 14: City Clerk Notice of Decision re MT dated April 2, 2013
- Ex. 15: A & T Towing slip 4118 (fax copy)
- Ex. 16: CD labeled "PD Crash"
- Ex. 17: CD labeled "2-10-16 @ 1048, Lambert 18"
- Ex. 18: CD labeled "2-26-16 @ 1130, Lambert 18"

All exhibits were admitted without objection.

10. The basic facts are undisputed. Following a motor vehicle accident at Crockett's Corner on October 19, 2015, SPPD dispatch contacted MT and requested the company provide a tow from the scene. The car, a blue Honda Civic owned by Ana Filipovic, was towed by a PHA tow truck driven by Mike Sanphy to 300 Main Street in South Portland. That evening, the owner of the car went to 300 Main Street and retrieved some personal belongings from her car. At some point between the time Ms. Filipovic retrieved her belongings and 12:48 pm the next afternoon, the car was towed to Moody's Collision Center in Scarborough. There was no evidence provided by either party that established who authorized the tow to Moody's Collision Center in Scarborough. The car owner indicated in her witness statement that she never authorized the tow to Moody's; instead, she stated she wanted the car to be repaired at Acme in South Portland and so she wanted it towed there. MT/PHA provided no evidence to the Police Department prior to the hearing or at the hearing evidencing any authorization to have the car towed from MT/PHA's facility at 300 Main Street in South Portland to Moody's Collision Center in Scarborough. Vincent Maietta testified that he had no reason to dispute Ms. Filipovic's statement that she did not authorize the tow to Moody's.
11. The billings surrounding the tows of Ms. Filipovic's car are multiple and some appear to be flawed. Exhibit 2 is the PHA tow slip in the amount of \$100 [the maximum crash scene tow fee authorized under Sec. 15-273(a)(1) of the Code] that tow truck operator Mike Sanphy filled out and turned into the PHA office on October 20, 2015, one day after the tow of the car from Westbrook Street to 300 Main Street. It is undisputed that this invoice was never submitted to anyone for payment, even though it appears to be an accurate invoice, prepared contemporaneously with the tow service that was provided and otherwise prepared in full compliance with ordinance requirements. Vincent Maietta testified that Exhibit 2 is "the only slip for this police tow."

12. Exhibit 1 is an A & T Towing tow slip dated October 19, 2015 for the tow of Ms. Filipovic's car from "Broadway @ Westbrook St" in South Portland to "Moody's Scarb" in the amount of \$300 (\$225 for towing services and \$75 for cleanup); this invoice was submitted to Ms. Filipovic's insurer and was paid by State Farm Insurance. Chapter 15 of the Code does not authorize an accident scene clean up fee for City tows. While the City Clerk is not a handwriting expert, the handwriting on Exhibit 1 closely resembles the handwriting on Exhibit 3, a PHA tow slip dated \_\_\_/21/15 in the amount of \$85 for towing Ms. Filipovic's car from Moody's in Scarborough to Acme in South Portland. (While the month is cut off on Exhibit 3, the parties agree that the date is most likely October 21, 2015.) This invoice (Ex. 3) was paid by Acme. Mr. V. Maietta testified that Exhibit 1 is, at its best, "poor record keeping."
13. MT/PHA has access to blank A &T Towing tow slips in its office. A & T Towing is not licensed by the City to perform tows for the Police Department and is not part of Maietta Enterprises, Inc. in any way.<sup>4</sup>
14. According to Ms. Filipovic's witness statement, she contacted PHA after the accident to discuss some alleged damage to the front end of her car incurred during towing, but PHA denied that it was involved in the tow and said that A &T Towing did the initial tow. When she contacted A &T Towing, it denied towing the vehicle. The witness statements of Lisa Hill and Stephen Jordan of A &T Towing state that A &T Towing did not tow a blue Honda Civic on October 19, 2015.
15. As part of the investigation of the complaint made by Acme to the SPPD about the manner in which the tow of Ms. Filipovic's car was handled, SPPD Officer Lambert spoke with Robert Maietta three times about the towing incident. See Exhibit 4. On February 10, 2016, Mr. R. Maietta told Officer Lambert that A & T Towing did the tow for him. When a photo of the PHA flatbed at the accident scene was shown to him, Mr. R. Maietta identified the wrecker as his but said that he loaned the wrecker to A &T Towing that day and that it had provided its own driver. When a photo of the accident scene that included the wrecker driver in it was shown to him, Mr. R. Maietta identified the driver as Mike Sanphy. Mr. R. Maietta then said that Mike only works for MT/PHA late at night and that Mike was just passing by and stopped to help. When a video of Mike Sanphy operating the wrecker was shown to him, Mr. R. Maietta insisted that he had A & T Towing do the tow. On February 26, 2016, Officer Lambert spoke with Mr. Sanphy, who indicated that he had performed the crash scene tow and filled out a PHA slip for the tow. See Exhibit 2. Later that same day, Officer Lambert again spoke with Robert Maietta and asked him if he had

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<sup>4</sup> A & T Towing is cautioned about the practice of providing blank tow slips to MT/PHA, as it could lead to negative consequences.

any more information on who may have made the tow to Moody's; Mr. R. Maietta said he was still checking. Officer Lambert asked if PHA had padded the towing bill and submitted different slips to the Police Department and to State Farm. Mr. R. Maietta denied that.

16. Vincent Maietta testified that his brother was "clearly mistaken" that A & T Towing performed the October 19, 2015 crash scene tow.
17. Police Officer Lambert testified at the hearing that he did not receive a copy of Exhibit 2 by the 10th day of November, 2015 as required by the ordinance, and he received a copy of it only after he asked MT/PHA for it.
18. In 2013, MT's wrecker business license was suspended for five months and it was fined \$100 by the City Clerk for overcharging customers. PHA was also warned to avoid similar overcharging at the time. See Ex. 14.

### **Conclusions**

Based on the above stated facts, the City Clerk makes the following conclusions:

- A. All parties were properly notified and the hearing properly convened. Further, Mr. R. Maietta was notified of the Police Department's concerns and was afforded a reasonable opportunity to contest the allegations against MT/PHA and to present such matters as MT/PHA deemed appropriate to refute the Police Department's case, but failed to appear and no reason was provided by either MT/PHA's attorney or his brother Vincent.
- B. The applicable Code provisions are Article VIII of Chapter 15 (wrecker/tow ordinance), Secs. 15-271, 15-273 and 15-283; and Article I of Chapter 14 (licensing ordinance), Secs. 14-8(a)(3) and 14-13 (misconduct found after hearing that relates directly to the public health, safety and welfare).
- C. In the City Clerk's opinion, while there is substantial evidence of billing practices by MT/PHA that are dubious, at best, there is insufficient evidence to support a finding that MT/PHA overcharged for the crash scene tow in violation of Sec. 15-272(a) of the Code.
- D. In the City Clerk's opinion, the above facts (#1 through #18) constitute violations of the following provisions of the Code:
  1. Section 14-8(a)(3) of the Code, that is, misconduct in the licensed business that presented a direct threat to the public's health, safety and welfare. Specifically, Exhibit 1 was prepared – apparently by an employee of MT/PHA – as an A & T Towing tow slip that was in turn submitted to State Farm Insurance Company for payment, but A & T Towing did not tow

the blue Honda Civic on October 19, 2015. Exhibit 1 is false and misleading.

2. Section 14-8(a)(3) of the Code, that is, misconduct in the licensed business that presented a direct threat to the public's health, safety and welfare. Specifically, the lack of candor and honesty of Robert Maietta, the front office manager of MT/PHA and one of the "principals" of MT/PHA (if not the owner himself) (see footnote 3 above), in his dealings with both the car owner, Ms. Filipovic, and Police Officer Lambert. Indeed, as Mr. R. Maietta was confronted with photographs and video footage related to the accident scene tow, Mr. R. Maietta's statements to Police Officer Lambert got more and more far-fetched, clearly inconsistent and dishonest.
3. Section 15-271(16) of the Code, that is, lack of authorization to release the vehicle to an approved storage or release facility, and Sec. 14-8(A)(3) of the Code, that is, misconduct in the licensed business that presented a direct threat to the public's health, safety and welfare. Specifically, the car owner, Ms. Filipovic, never authorized the tow to Moody's in Scarborough and there is no evidence of any authorization to have her car towed to Moody's. Valuable personal property such as a motor vehicle cannot be taken to unauthorized locations by a business that is licensed by the City.
4. Section 15-271(6) of the Code, that is, failure of licensee to forward copies of receipts for all services provided under Article VIII of Chapter 15 during the prior month. Specifically, the Police Department did not receive a copy of Exhibit 2 by the 10th day of November, 2015.

### **Decision**

Based on the above findings of fact and conclusions, the testimony of the witnesses and the documents admitted into evidence, the City Clerk finds two separate violations of Section 14-8(A)(3) of the Code, a violation of Section 15-271(16) of the Code, and a violation of Section 15-271(6) of the Code. As an appropriate remedy, Maietta Towing, Pleasant Hill Auto Sales, Inc. and Maietta Enterprises, Inc. (to the extent the latter is the one legal entity that is recognized in Maine) shall all be removed from the City's tow list (both primary and secondary) for the balance of the license year (*i.e.*, until November 20, 2016). If Maietta Towing, Pleasant Hill Auto Sales, Inc. and/or Maietta Enterprises, Inc. wish to reapply for a license under Chapters 14 and 15 at the conclusion of this suspension period, they are cautioned to submit true and accurate information to the City Clerk's Office at the time of application and to amend or supplement such information as necessary during any license period. See Sec. 14-8(a)(1) of the Code.

**Appeal**

Any appeal from this decision must be made to the South Portland City Council within thirty (30) days by filing a written notice of appeal in the City Clerk's Office.

Dated: May 25, 2016

By:   
Emily Carrington, City Clerk

cc: Timothy Steigelman, Esq., Attorney for Licensee  
Edward Googins, Chief of Police  
Joshua D. Hadiaris, Esq., Attorney for Police Department  
Sally J. Daggett, Esq., Attorney for City Clerk

Chapter 14

LICENSES, PERMITS AND BUSINESS REGULATIONS GENERALLY\*

**ARTICLE I. IN GENERAL**

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**Sec. 14-8. Standards for denial, suspension or revocation.**

(a) Generally applicable standards.

In addition to any other specific provision of this Code authorizing action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:

- (1) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
- (2) Failure to notify the City Clerk of any change of material fact set forth in the license application;
- (3) The applicant's or the licensee's business or professional conduct hereunder has been the source of one or more complaints of record that have been found to be valid and the conduct relates directly to the public health, safety or welfare;
- (4) Noncompliance of the licensed premises or its use with the Code of Ordinances, including any land use ordinances, or the applicant/licensee has violated one of more provisions of this Chapter or other City ordinances, including, without limitation, the City's zoning and licensing ordinances;
- (5) Conditions of record such as waste disposal violations, health or safety violations, or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises or other such conditions caused by persons patronizing, visiting or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
- (6) Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing, visiting or employed by the licensed premises;
- (7) The applicant's or licensee's real or personal property taxes, plus any and all accounts of the applicant or licensee, payable to the City, do not comply with

- Section 14-7 of this Article;
- (8) The licensee has violated any provision of this Code in the course of the conduct of the activity or device for which the license or licenses have been applied for, or have been issued; or
  - (9) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof.

(b) Background checks.

In addition to other requirements stated in this Chapter, background checks are required of the following applicants before a license shall be issued: food service establishments with alcohol; massage therapists; pawnbrokers; peddlers and solicitors; second hand dealers; temporary vendors; holders of a taxicab certificate of public necessity; [wrecker and towing business drivers for each driver at least once every 5 years](#); and taxicab drivers. Background checks are also required of the following applicants before a license shall be renewed: massage therapists; holders of a taxicab certificate of public necessity; [wrecker and towing business drivers for each driver at least once every 5 years](#); and taxicab drivers. Failure to submit required releases for a background check is grounds for denial of a license. The cost of the background check shall be borne by the applicant.

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CHAPTER 15

MOTOR VEHICLES AND TRAFFIC\*

ARTICLE VIII. WRECKERS AND VEHICLE TOWING.

Division 1. GENERALLY.

**Sec. 15-269. Purpose**

In order to protect the safety of persons who operate motor vehicles within the corporate limits of the city, to ensure that the streets and public ways of the city remain open and free of hazard to the public and to further effectuate the efficient enforcement of the city's traffic, parking, snow removal and other regulatory ordinances, it is determined necessary to ensure by licensing and regulating persons engaged in the business of providing to the general public and the City of South Portland's Police Department vehicle wrecker or towing and required repair services, to establish rates for ~~such~~ services performed at the request of the Police Department, to regulate the storage and disposition of vehicles ~~so-towed~~ at the request of the Police Department, and to set fees and penalties for the enforcement thereof.

(Ord. No. 2-911/92, 7-15-91)

**Sec. 15-270. Definitions**

The following words and terms as used in this article shall have the common meanings ascribed thereto, except that the definitions set forth in Chapter 1, in Article 1 of this Chapter and in this section shall apply, unless the context clearly indicates a different meaning:

*Night, weekend or holiday release hours* means weekdays between the hours of 5:00 pm and 7:00 am, Saturdays, Sundays or holidays.

*Storage and release facility* means the real property and any structures thereon to which wreckers tow or transport motor vehicles for storage until the vehicle owner claims the vehicle.

*Towing list* means a list maintained by the police epartment containing the names of those wreckers licensed by the city to respond to requests for the towing of vehicles made by the Police epartment. The towing list itself shall consist of two lists:

- (1) A primary list of wreckers capable of having a wrecker vehicle at a scene within

twenty (20) minutes of a towing request by the Police department.

(2) A secondary list to be used by the Police Department when the wreckers in the primary list are not available which shall include but not be limited to any wrecker with a history of response times of more than twenty (20) minutes or other non-responsive behavior.

*Wrecker* means a person engaged in the business of, or offering the services of, a wrecker vehicle or towing service, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designed for that purpose.

*Wrecker vehicle* means a motor vehicle intended to be used to tow or otherwise transport other motor vehicles.

(Ord. No. 2-91/92, 7-15-91, Ord. No. 5-98/98, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. 15-02/03, 7/7/03 [Fiscal Note: Less than \$1000]; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-271. Minimum continuous regulations.**

A. The following minimum regulations will be met on a continuous basis by all licensees:

- (-1) Licensees shall operate and maintain storage and release facilities within the city, or within a radius of five (5) miles from South Portland City Hall, as may be necessary for safe and proper conduct of towing activities.
- (2) Towing equipment used by a licensee to perform services under this article shall only be used by said licensee and not by other licensees or otherwise. Any changes in licensee's towing equipment during the license year shall be immediately provided to the City Clerk for review and approval by the eChief of police or his/her designee.
- (3) Licensees shall permit the eChief of Police or his/her designee to conduct one (1) regular and two (2) random inspections of each wrecker vehicle during the term of the license.
- (4) Licensees shall permit the Chief of Police or his/her designee to conduct one (1) regular and two (2) random inspections of each storage and release facility during the term of the license.
- (5) Licensees on the towing list shall not employ, utilize the services of, or rely upon the advice of, sworn members of the South Portland Police Department in the regular conduct of their business, even if such services or advice are provided without pay or other remuneration.

- (6) No wrecker operator, owner or employee shall, during the course of business, engage in any rudeness, threats, loud arguments, fights or other disturbances. A wrecker operator, owner or employee shall not, during the course of business, harass, threaten, or assault another person or intentionally damage, destroy, or threaten to damage or destroy any property or in any other manner engage in conduct detrimental to the orderly, safe, and efficient towing of a vehicle.
- (7) No wrecker operator, owner or employee shall during the course of business use any illegal drugs or alcohol. No licensee shall condone or permit the use of any illegal drugs or alcohol by an employee.
- (85) Licensees shall maintain such records as required by this article and any regulations promulgated by the eCChief of PpPolice pursuant to section 15-272 and shall permit their inspection by the eCChief or his/her designee during normal business hours.
- (96) By the 10th day of each month, licensees shall forward copies of receipts for all services provided under this article during the prior month to the eCChief of PpPolice or his/her designee.
- (107) Vehicles must be towed or carried, not driven, to storage facilities.
- (118) Licensees must provide a secure storage facility as approved by the eCChief of PpPolice or his/her designee during the license approval process. There shall be no change in the approved storage facility during the license year without the prior approval of the CeChief of PpPolice or his/her designee.
- (12) When the owner/operator of a vehicle being towed is not present at the time of the tow, the wrecker operator must sign and be given a copy of the Police Department's Inventory Sheet. The Inventory Sheet shall list the owner or operator to whom the vehicle may be released, unless a hold is placed on the vehicle. Additional authorized persons to whom the vehicle may be released may also be included on the form.
- (139) No vehicle shall be towed to any storage and release facility or other property outside of the city unless pursuant to subsection (1) of this section or unless it has been unclaimed for thirty (30) days and only upon the prior written notice to the PpPolice eCChief or his/her designee.
- (140) The pPPolice eCChief or his/her designee must be notified of any unclaimed vehicle by forwarding a copy of the invoice or towslip for any unclaimed vehicle once a month to the PpPolice CeChief or his/her designee. Said documents shall be forwarded by the tenth day of each month and shall include documentation for each vehicle in licensee's possession that remains unclaimed on the last day of the preceding month.

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- (154) In the event of any vehicle being towed or transported following an accident, Licensees shall clean the accident area of all nonhazardous vehicular debris resulting from the accident.
- (162) Licensees shall not make any repairs to vehicles without the consent of the owner.
- (173) Licensees shall advise vehicle owners at the time the owner arranges to retrieve the vehicle and prior to its release of the specific amount of any release fee that will be charged pursuant to section 15-273(d). If the licensee is going to require cash payment by any owner, the licensee must so advise the owner at the time the owner arranges to retrieve the vehicle and prior to its release.
- (184) Licensees shall defend, indemnify and hold the city harmless from all claims for damages to property and injuries to persons resulting from the licensees' negligence or intentional misconduct in the towing or storage of vehicles pursuant hereto.
- (195) Licensees shall conspicuously post current rates for services under this article at the release facility.
- (2046) Licensees shall release vehicles at the approved storage and release facility within one (1) hour of the owner's request and payment of any applicable fees.
- (21) Upon payment of the towing fee, licensees shall give the vehicle owner a printed receipt that includes the name of the towing company, the name of the wrecker operator, and the towing company's current address and phone number. The receipt shall itemize the cost of towing, storage and any other fees paid by the vehicle owner. No vehicle may be released without notification to the vehicle owner or other responsible party as to where, when and to whom the vehicle was released.
- (22) If the vehicle is released to someone other than the owner or the person listed on the Inventory Sheet, a copy of that person's identification must be forwarded by the licensee to the Chief of Police or his/her designee along with receipts from City tows by the 10th day of every month. If the person whose identification is requested refuses to allow the licensee to make a copy of the identification, the licensee should immediately call the Police Department to seek further direction on how to proceed.
- (2347) Licensee shall require owner identification when releasing a vehicle. If the release occurs outside of night, weekend or holiday release hours as defined herein, the licensee shall make a photocopy of the owner identification provided. If the person whose identification is requested refuses to allow the licensee to make a copy of the identification, the licensee should immediately call the Police Department to seek further direction on how to proceed. If the release occurs during night, weekend or holiday release hours as defined herein, the licensee shall record the driver's license number of the owner.
- (24) Any change in insurance coverage, tow vehicles, storage location, or employees

shall be reported to the City Clerk within five (5) days of the change. A copy of any new employee's driver's license must accompany the notice.

B. The Police Department shall observe the following procedure for maintaining the towing list and contacting wreckers for service calls:

- (1) Notwithstanding that wreckers will initially be assigned to either the primary or secondary list based on their response time of twenty (20) minutes, the Police Department shall move wreckers with a history of unavailability or slow response time from the primary list to the secondary list and may move wreckers with a history of satisfactory response time from the secondary to the primary list.
- (2) The Police Department shall call wreckers on the primary list on a rotating basis.
- (3) The Police Department may contact wreckers on the secondary list as needed.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-272. Regulations may be promulgated by Cehief of Ppolice.**

The Cehief of Ppolice is hereby authorized to promulgate regulations not inconsistent with this article to carry out the intent of the article. All licenses issued pursuant to this article shall be subject to such applicable regulations as are adopted hereunder either prior to or after the date of the issuance thereof.

(Ord. No. 2-91/92, 7-15-91)

**Sec. 15-273. Rates for services.**

(a) The maximum rates for services regulated under this article shall be as follows:

- (1) Crash tows: \$12500.00 per tow.
- (2) Tows other than crash tows: \$10085.00 per tow.

A towing fee accrues when the vehicle is considered "hooked" to the wrecker, i.e., when the vehicle has been physically connected to the wrecker in some fashion.

(b) Recovery charges: Where a vehicle is off-road, submerged, rolled over or otherwise requires special equipment for retrieval before it can be towed, a charge of \$80 may be assessed in addition to the towing fee stated in (a). If the recovery takes longer than one hour, a rate of \$80.00 per hour after the first hour may be charged.

- (c) Storage charges: \$30.00 per day, after 24 hrs.
- (d) Vehicle release: When an owner requests release of the vehicle during night, weekend or holiday release hours as defined herein, an additional charge of \$25.00 may be assessed. If a vehicle is released outside of night, weekend or holiday release hours as defined herein, no charge shall be assessed for the release.

-(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000] Ord. No. 15-02/03 7/7/03 [Fiscal Note: less than \$1000]; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-274. Disposition of abandoned vehicles.**

- (a) The licensee shall comply with the procedures set forth in Title 29-A M.R.S.A. Sections 1851 - 1861, Abandoned Vehicles. Whenever a licensee notifies the Secretary of State that it is in possession of an abandoned vehicle, it shall also provide a copy of such notification to the Chief of Police or his/her designee.
- (b) In the event of an unclaimed or abandoned vehicle, the licensee's sole remedy shall be as outlined in Title 29-A M.R.S.A. Sections 1851 - 1861 regarding unclaimed and abandoned vehicles.
- (c) A copy of Title 29-A M.R.S.A. Sections 1851 - 1861 shall be issued to each licensee and shall be available to the public in the City Clerk's office.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-275. Release of vehicles impounded pursuant to provisions for towing parked vehicles.**

Whenever a vehicle has been removed and stored pursuant to Police Department request, it shall not be released until the provisions of section 15-44 concerning the payment of waiver fees and charges owed to the city have been complied with.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-276. Removal of towed vehicle or parts thereof from wreckers' lot.**

No vehicle or part or accessory thereof that has been towed by Police Department request shall be removed from the possession or premises of the licensee or owner of the storage area by any person, including the owner of the towed vehicle, except in accordance

with section 15-44. Nothing herein shall prohibit the licensee from acting in accordance with this article. Upon written application of the owner of a vehicle being held by the licensee, the ~~e~~C~~h~~ief of ~~P~~p~~o~~lice or authorized representative may make suitable arrangements for the retrieval of specified property if satisfied that there are exigent circumstances requiring retrieval prior to the owner reclaiming the vehicle.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000])

**Sec. 15-277. ~~Enforcement. (Reserved.)~~**

~~(a) Any violation of this division shall be punishable by a fine not exceeding one hundred dollars (\$100.00), and each day that a violation continues shall be treated as a separate offense.~~

~~(b) The chief of police or his/her designee may, prior to commencement of court action, issue a notice of violation to any person charged with a violation of this division. Said notice shall be in a form approved by the corporation counsel and shall provide a method by which a person charged with a violation of this division may waive court action with respect to the violation by payment of a specified fee within a stated period of time.~~

~~(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])~~

**Division 2. LICENSE.**

**Sec. 15-278. Required.**

(a) No wrecker shall tow any vehicle within the city by ~~p~~P~~o~~lice Department request pursuant to this chapter nor shall any wrecker be placed on the towing list unless such wrecker is currently licensed.

~~(b) Only one license may be issued to a legally organized business and its business affiliates. Business affiliates are those persons and/or entities that (a) either directly or indirectly, one controls or has the power to control the other; or (b) a third party controls or has the power to control both. Evidence of "control" includes, but is not limited to: interlocking management or ownership; shared facilities and equipment; common use of employees; or a business entity organized after the removal or suspension of a licensee from the towing list that has same or similar management, ownership, or employees as the original licensee.~~

~~(c) Each licensee shall own/lease and operate its own wrecker(s), which for the purposes of this Article, must be used exclusively by the licensee.~~

- (~~db~~) All licenses issued pursuant to this section shall be granted, granted with conditions, denied, suspended or revoked by the City Clerk, subject to appeal to the City Council.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000])

**Sec. 15-279. Investigation; ~~issuance or denial.~~**

- (a) Within thirty (30) days after receipt of an application under this ~~Article~~division, the Chief of Police shall conduct an investigation to determine: the truth, accuracy and adequacy of the information contained in the application; the ability of the applicant to furnish the required service and to abide by the regulations and provisions set forth herein and established pursuant to section 15-272; the applicant's past record of performance in any wrecker or towing business and the adequacy of the applicant's equipment and storage facilities. Upon completion of the investigation, the Chief of Police shall forward a report of the investigation to the City Clerk, who shall either grant, grant with conditions, or deny the license and notify the applicant in writing of such decision and the findings and reasons, if any, for denial of the license. Upon request of a licensee, the ~~C~~lerk shall forward to the licensee a copy of this article and any regulations adopted pursuant thereto.
- (b) The following information must be submitted prior to commencement of the investigation:
- (1) Evidence that the applicant is a legally organized business. This may include business filings with the Secretary of State; copies of deeds, leases, rental agreements and Assessor's records; names and addresses shown on federal and state tax filings; copies of insurance coverage for the premises and for the employees therein; advertising; and motor vehicle registrations;
  - (~~2~~) Location, size and security features of the storage facility on which towed vehicles will be stored;
  - (~~3~~) Location of release facility to which the public must come to claim stored vehicles;
  - (~~4~~) List of towing equipment, including make, model, year, VIN number, size, ~~and~~ capacity and, where applicable, vehicle registration. Applicant shall supply such evidence as the Clerk may require that demonstrates that the towing equipment will be used exclusively by that single business in connection with the towing list rotation;
  - (~~5~~) Description of the two-way mobile communications and base station to be

used for each wrecker and at the office where calls are received;

- (65) Statement of willingness to provide release of vehicles on a continuous twenty-four-hour-a-day basis each day of the year;
- (7) Copy of driver's license of all employees operating wreckers in response to calls from the Police Department so that a background check on drivers may be conducted for each driver at least once every five (5 ) years; and
- (86) Such other information as the Clerk may require on the license application.

(Ord. No. 2-91/92, 7-15-92; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. 5-13/14, 2/3/14 [Fiscal Note: Less than \$1000])

**Sec. 15-280. Insurance required.**

- (a) No wrecker shall be issued a license until the applicant has deposited with the Clerk two copies of the following policies, and the Clerk shall provide one copy to the Chief of Police:
  - (1) Garagekeeper's legal liability policy covering the premises, including fire, theft, windstorm, vandalism and explosion, in the amount of at least twenty-five thousand dollars (\$25,000.00), with each vehicle suffering damage or loss being deemed a separate claim.
  - (2) Towing/wrecker service commercial liability policy covering the operation of the licensee's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of four hundred thousand dollars (\$400,000.00) combined single limit for personal injury and property damage, or such other amount as may be required by the Maine Tort Claims Act (14 M.R.S.A. §8001 et seq) as amended from time to time, whichever amount shall be greater. Each wrecker insured shall be identified by make, model and vehicle identification number (VIN).
  - (3) Road service liability coverage for the lifting, hoisting and towing of vehicles must be included in the licensee's garagekeeper's legal liability policy.
- (b) Each policy required above shall name the City as an additional insured and the certificate evidencing the same shall be in a form satisfactory to the corporation counsel. The licensee shall maintain such insurance at all times during the term of the license, and the licensee shall provide the City Clerk with not less than thirty (30) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.

- (c) The lapsing or cancellation of any policy as required hereinabove shall result in the immediate termination of the wrecker's license without any action on the part of the city.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 15/02/03, 7/7/03 [Fiscal Note: Less than \$1000]; Ord. No. 12-11/12, 5/7/12 [Fiscal Note: Less than \$1000])

**Sec. 15-281. Fee.**

Annual license fees shall be as provided in chapter 14, Section 14-3.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99 [Fiscal Note: Less than \$1000])

**Sec. 15-282. Transferability.**

Transferability of licenses issued under this [Article](#) shall be as provided in chapter 14.

(Ord. No. 2-91/92, 7-15-91)

**Sec. 15-283. Grounds for revocation, suspension or denial.**

A license issued under this [Article](#) may be suspended, or revoked and an application for a license may be denied by the City Clerk upon a determination that the licensee, or applicant, or wrecker operator:

- (a) Violated any of the requirements or regulations established herein or by the [Chief](#) of [Police](#) under this article; -or
- (b) Has provided unsatisfactory services for city-authorized towing [or the business has been the source of consumer complaints that have been found to be valid](#); -or
- (c) Has been convicted of any crime or has had his/her driver's license revoked or suspended by the State of Maine at any time during the five (5) years immediately preceding application; -or has been imprisoned at any time during the preceding five years; -provided that said conviction was for an offense which is rationally related to the purpose of licensing wreckers.

No license shall be suspended or revoked without a hearing conducted not less than seven nor more than thirty days after written notice has been served on the licensee personally or by first class mail, postage prepaid. The notice shall contain a generalized statement of complaint.

(Ord. No. 2-91/92, 7-15-91; Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000])

**Sec. 15-284. Appeals.**

- (a) An appeal to the City Council may be taken by any person aggrieved by the granting, granting with conditions, denial, suspension or revocation of a license hereunder by the Ceity Clerk by filing a written notice of appeal in the office of the City Clerk within thirty (30) days of the decision appealed from. Such notice of appeal shall state the basis for the appeal. Within twenty (20) business days after the filing of the notice of appeal, the City Council shall hear the appeal and may affirm, reverse or modify the decision appealed from.
- (b) An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 80 B of the Maine Rules of Civil Procedure.

(Ord. No. 2-91/92, 7-15-91, Ord. No. 5-98/99, 9/9/98 [Fiscal Note: Less than \$1000])

**Sec. 15-285. Violations.**

Any violation of this Article, or any regulations adopted hereunder, may subject the licensee to any of the following penalties:

- (a) Written warning;
- (b) Removal from the primary towing list and placement on the secondary list; and/or
- (c) Referral of the matter to the City Clerk for further action on the license.

In addition, Any violation of this Article~~division~~ shall be punishable by a fine not exceeding one hundred dollars (\$100.00), and each day that a violation continues shall be treated as a separate offense.

(Ord. No. 2-91/92, 7-15-91)

# City of South Portland

## Wrecker and Vehicle Towing Regulations

### September \_\_\_\_, 2016

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Pursuant to Sec. 15-272 of the Wreckers and Vehicle Towing Ordinance of the City of South Portland (Article VIII of Chapter 15 of the South Portland Code of Ordinances), the Police Chief hereby promulgates the following regulations effective immediately:

1. Consistent with Sec. 15-270 of the Ordinance, the Police Department maintains a primary and secondary towing list of licensees willing to accept towing work requested by the City. Towing work includes junk car removal, scofflaws, crashes and motor vehicle violations. All licensees on the towing list are expected to accept all types of work. Three refusals to provide towing service within a sixty (60) day period, without good cause shown, shall be cause for removal from the primary list and placement on the secondary list by the Police Chief. Once a licensee is placed on the secondary list, three additional refusals within a sixty (60) day period may result in a licensee's removal from the towing list. "Good cause" for refusing a tow includes a documented equipment failure or documented proof that a truck was out of service for repairs and no other truck was available to handle the tow. Towing in another jurisdiction is not considered to be "good cause."
2. Licensees on the towing list shall have either a two-way radio or a cellular phone in the wrecker.
3. Licensees must maintain a business phone that is answered 24 hours a day.
4. Licensed wreckers must be equipped with a fire extinguisher and emergency lights.
5. A wrecker owned or operated by a licensee on the towing list shall be equipped with a means of removing a vehicle without wheels.
6. Licensees shall carry appropriate equipment (broom and shovel) for removal of debris from accident scenes. Licensees shall be responsible for sweeping debris from accident scenes. If debris is not removed, the licensee will be called and expected to remove all debris as soon as possible.
7. Licensed wreckers must have the business name and phone number stenciled on both doors of the vehicle in letters at least three (3) inches high.
8. Licensees shall arrive on the scene within twenty (20) minutes of receipt of a request for service from the Police Department. Licensees who are not able to respond to a request for service must advise Police Dispatch of that fact within ten (10) minutes of the request.

9. Licensees must notify Police Dispatch of a private tow made without the vehicle owner's knowledge within thirty (30) minutes of the tow.
10. Licensees must advise vehicle owners prior to release of the vehicle that there is an additional fee if the vehicle is released between 5:00 p.m. and 7:00 a.m. or any Saturday, Sunday, and holiday. Licensees must also advise vehicle owners that a daily storage fee of \$30.00 will be charged for vehicles left longer than twenty-four (24) hours.
11. If cash is the only accepted means of payment to licensee, the vehicle owner must be notified of that fact at the time the owner calls to locate the vehicle. Wrecker operators must carry adequate currency to make change or inform vehicle owners when the owner calls to locate the vehicle that they must pay with the exact amount of the towing charge in cash.
12. When a vehicle owner calls to locate a vehicle, the owner shall be told the location of the vehicle. Arrangements shall be made to meet the owner at that location within one hour of the call.
13. Storage lots must be secured and have adequate illumination. Lighting should be bright enough to illuminate the majority of the lot.
14. Whenever the Police Department receives or initiates a complaint regarding a wrecker operator, owner, licensee or employee, the complaint will be referred to the South Portland Police Supervisor assigned to handle Wrecker Applications and Towing Complaints for investigation and review, unless the matter has already been investigated as a criminal matter, in which case no such referral shall occur. If the complaint involves a tow that was initiated by another City department, the complaint shall be referred to that department for investigation. If the complaint alleges a violation of the Ordinance or these regulations, the licensee and any other interested parties will be notified in writing of the nature of the complaint. Once the investigation is complete, the licensee and any other interested parties will be notified of the outcome of the investigation. If appropriate, the licensee will be given an opportunity to respond to investigative findings.
15. The Chief of Police will review the investigative findings and determine if the matter should be referred to the City Clerk for action on the license.
16. A licensee moved to the secondary list by the Police Chief may be considered for return to the primary list upon written request to the Police Chief made no less than sixty (60) days after placement on the secondary list. Such request shall be accompanied by the licensee's plan to rectify the issues prompting removal from the primary list.
17. A list of complaints by citizens or members of the Police Department against licenses shall be maintained by the Police Chief or his designee and such complaints may be considered during the license renewal process.