

**Borough of Emerson
Bergen County, NJ
NOTICE OF ADOPTION**

Introduced: April 22, 2014

Adopted: May 6, 2014

NOTICE IS HEREBY GIVEN that the following proposed Ordinance was introduced and passed on first reading at the Regular meeting of the Borough Council of the Borough of Emerson on the 22nd day of April, 2014, and that said proposed Ordinance will be further considered for final passage at the meeting of said Borough Council to be held on the 6th day of May, 2014 at 7:30 p.m., or as soon thereafter as said matter can be heard at the Municipal Building, Linwood Avenue, Emerson, New Jersey, at which time and place all persons who may be interested therein shall be given an opportunity to be heard concerning same.

**AN ORDINANCE AMENDING CHAPTER 264 ENTITLED TOWING FO THE REVISED GENERAL ORDINANCES OF THE
CODE OF THE BOROUGH OF EMERSON**

Ordinance No. 1476-14

Be it ordained by the Council of the Borough of Emerson as follows:

Section 1.

The Code of the Borough of Emerson is hereby amended by deleting and repealing Chapter 264 , Towing and replacing with the following new Chapter.

Section 2. Effective Date

This ordinance shall become effective May 6, 2014.

Chapter 264: TOWING

§ 264-1Definitions.

§ 264-2Designation and licensing of official towers.

§ 264-3Furnishing of service by official towers.

§ 264-4Application for official tower license.

§ 264-5Investigation.

§ 264-6Issuance of license.

§ 264-7Insurance.

§ 264-8Minimum standards of performance.

§ 264-9Order of list of official towers; rotation.

§ 264-10Towing and storage fee schedule.

§ 264-11Miscellaneous provisions.

§ 264-12Violations and penalties.

§ 264-13Severability.

§ 264-14Effective date.

§ 264-1Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AUTOMOBILE

A motor vehicle of a private passenger or station wagon type (to include minivans and sport utility vehicles) that is owned or leased and is neither used as a public or livery conveyance for passengers nor rented to others with a driver, and a motor vehicle with a pickup body, or delivery sedan, a van or panel truck or a camper-type vehicle used for recreational purposes owned by an individual or husband and wife who are resident of the same household, not customarily used in the occupation, profession or business of the owner(s).

BASIC TOWING SERVICE

The removal and transportation of an automobile from a highway, street or other public or private road or a parking area or from a storage facility and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm or from being impaled upon any other object within the right-of-way or berm.

INSIDE BUILDING

A vehicle storage facility that is completely indoors, having one or more openings in the walls, for storage and removal of vehicles and that is secured by a locking device on each opening.

MOTOR VEHICLE ACCIDENT

An occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility. This includes all situations which are accidental as to the licensed owner or operator of the motor vehicle even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the licensed owner or operator of the motor vehicle.

OUTSIDE SECURED

An automobile storage facility that is not indoors and is secured by a fence, wall, or other man-made barrier that is at least six feet high and is installed with a locked gate. The facility is lighted at night.

RECOVERY

Recovery can be achieved by several actions which may include but are not limited to winching and rigging. A recovery is when the tow operator applies his knowledge in a skillful manner to preserve the condition of the motor vehicle while moving the damaged vehicle to a towable position.

STORAGE CHARGES FOR TWENTY-FOUR-HOUR PERIOD

The maximum allowable amount to be charged by a storage facility for a twenty-four-hour period or fraction thereof; a new twenty-four-hour period begins at 12:01 a.m. of the succeeding day.

TOW VEHICLE

Only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or underreach equipment specifically designed by its manufacturer for the removal or transport of motor vehicles.

TOW VEHICLES BASE OR PLACE OF SERVICE

The towing operator's principal place of business where the tow vehicle is stationed or when not in use.

VEHICLE REMOVAL CHARGE

Charge for a motor vehicle towed into the storage facility of the primary tower that is not movable and must be towed out of the primary tower's storage facility to a public street for towing by the secondary tower.

WAITING TIME

Additional time a tow operator spends at the scene other than the time required for the actual tow and/or recovery. Examples of waiting time may include but are not limited to EMS services which must be performed and/or police investigations.

WINCHING

The process of moving a motor vehicle by the use of the cable from a position that is not accessible for direct hook up by conventional means for loading onto a tow vehicle. Winching is not pulling a vehicle onto a tilt bed or carrier nor lifting a motor vehicle with a conventional tow sling.

§ 264-2 Designation and licensing of official towers.**A.**

The governing body of the Borough of Emerson shall license persons or companies meeting the criteria set forth in this chapter and engaged in the business of, or offering the services of, motor vehicle towing, wrecker and/or storage services, whereby damaged or disabled motor vehicles are towed or otherwise removed from the place where they are damaged or disabled by use of a tow vehicle, as defined herein. Such person or company shall be known as an "official tower."

B.

Police Department or borough designee will maintain record of approved towing companies.

C.

No person may engage in municipal towing at police request without first obtaining a license as provided by this chapter. Nothing in this chapter shall apply to persons who operate a wrecker or tow truck that picks up disabled vehicles outside the Borough limits and are in the course of taking such vehicles to a garage or other location, either within or without the Borough, nor to wreckers or tow trucks whose services are specifically requested by the driver or owner of a disabled vehicle.

D.

In an effort to fairly distribute towing, a license shall not be issued to any individual, partnership, corporation, limited liability corporation, or any other business entity where that person or entity has an interest in another business entity already possessing or applying for a license.

§ 264-3 Furnishing of service by official towers.**A.**

The official tower shall furnish adequate and proper towing, wrecking, storage and emergency repair service to damaged or disabled motor vehicles within the limits of the Borough when requested to do so by the Chief of Police or his designee. The official tower shall be available to render service 24 hours per day, seven days per week.

B.

In the event that a disabled vehicle requires special towing equipment and the official tower does not possess such equipment, then the Chief of Police or his designee shall select the next official tower in the rotation list who does possess the necessary special equipment to tow such disabled or damaged vehicle. No official tower shall subcontract or assign work to be performed by the official tower under the provisions of this chapter.

§ 264-4 Application for official tower license.**A.**

Any person, corporation or business firm who desires to perform towing work at police request shall submit an application in accordance with the provisions of this chapter for a towing license on forms furnished by the Borough Clerk to the Chief of Police. The application shall state:

(1)

The full name, address, date of birth, social security number and telephone number of the applicant. If the application is made for a corporation, it shall state the corporation's registered office, its registered agent, the names, residences and telephone numbers of all persons owning an interest in the corporation, as well as the date of birth and social security numbers of all applicable persons.

(2)

No person(s), corporation, partnership, limited liability company or other business entity that is listed as having or possessing an ownership interest on an application of a towing company seeking an official tower license from the Borough shall be listed as having or possessing an ownership interest on the application of any other towing company seeking to become an official tower for the Borough. If a person(s), corporation, partnership, limited liability company or other business entity is listed as having or possessing an ownership interest on more than one application for an official tower license, then the Chief of Police shall contact that person(s) or business entity and advise of the violation of this section and the applications shall be returned to both towing companies along with each towing company's application fee. Nothing shall preclude either towing company from resubmitting an application in accordance with this chapter.

(3)

In the event that the official tower is conducting business under a trade name or business name, the applicant shall submit a certificate of such name filed with the County Clerk's Office of Bergen County, as well as the Secretary of State for the State of New Jersey.

(4)

Such information as may be required by the Mayor and Council or designees concerning the personnel, vehicles, equipment and storage facilities of such applicant, as hereinafter provided, showing that the applicant meets the minimum standards of performance.

(5)

Certificates of insurance evidencing adequate insurance coverage as hereinafter provided.

(6)

A fee of \$250 to cover the administrative expenses incurred by the Borough in processing the applications and an additional fee of \$75 for each vehicle pursuant to the requirements of the official towing company license application.

(7)

All towing vehicles must be listed on the application, including the make and model number, year of vehicle and vehicle identification number. The towing company submitting the application must own, or be the lessee of, all vehicles listed on the application. No vehicle may be listed on more than one application, and there can be no transfer of vehicles between official towers.

(8)

All persons or entities submitting applications to become an official tower shall contact the Criminal Information Unit at (609) 882-2878 and request background check forms for each owner, member of the corporation, director, stockholder, partner and employee. The tower, upon receipt of the forms, will have each employee, owner and other person having an ownership interest in the business complete the forms and return the original forms with a check for \$15 for each form to the Criminal Investigation Unit and a copy of each form to the Borough of Emerson Police Department. The official tower shall follow the aforementioned procedure for each new hire. No person found to have a criminal record shall be employed by or have an ownership interest in a official tower's business.

B.

No license shall be granted to an official tower unless and until it has appointed the Borough Clerk as the official tower's true and lawful attorney for the purpose of acknowledging service out of any court of competent jurisdiction to be served against the official tower.

C.

Upon receipt of a complete application, the Borough Clerk shall forward a copy to the Chief of Police or his designee for review and recommendation. The review by the Chief of Police or his designee shall consist of the following:

(1)

A background check to determine if either the applicant [all owners as defined in Subsection A(1) above] or the applicant's personnel (all persons authorized or licensed to drive a towing vehicle) have been convicted of a criminal offense or have had their driver's license suspended or revoked within the past year. Conviction of a criminal offense or suspension of a driver's license within the past year shall be a cause for disqualification from inclusion on the official towers list. No person who has been convicted of a criminal offense or whose driver's license has been suspended shall be employed as a driver of a tow truck or wrecker by the official tower. A background check shall be made for any person employed by the official tower after a license has been issued.

(2)

An inspection of the personnel, vehicles, equipment and storage areas proposed to be utilized by the applicant to verify the accuracy of the information contained in the application and to determine compliance with applicable laws and regulations and the standards of performance required by this chapter.

(3)

An updated list of personnel with all information required pursuant to Subsection C(1) above provided to the Borough Clerk at least 10 calendar days prior to the applicant's assuming its position as the Borough's official tower.

D.

If the Chief of Police receives no more than two applications from a person, corporation or business firm that has its place of business within the Borough, then and only then, may the Borough consider applications from a person, corporation or business firm that has its place of business in the municipalities bordering the Borough, provided that the person, corporation or business firm complies with all of the provisions of this chapter.

§ 264-5 Investigation.

A.

After receiving a letter of application for a towing license, the Chief of Police shall conduct or cause to be conducted an investigation to determine the following:

(1)

The truth and accuracy of all the information contained in the application;

(2)

Whether the applicant and all employees are fit and proper persons to conduct the proposed business;

(3)

Whether the applicant has demonstrated, by his equipment capacity, the location of the business and the location to which requests will be directed during on-call hours, the ability to respond to calls 24 hours a day and whether such ability to respond is sufficient to provide a response to any location within the Borough of Emerson within 10 minutes of request made by the Police Department from 6:00 a.m. to 6:00 p.m., and 15 minutes from 6:01 p.m. to 5:59 a.m.; and

(4)

Whether the applicant has demonstrated that a person whose vehicle has been towed can retrieve that vehicle from the applicant during prescribed hours on any given day, seven days a week.

B.

The investigation shall be completed within 21 days of receipt of the application from the Borough Clerk. Upon completion of his investigation, the Chief of Police shall forward a copy of the letter of application for a towing license to the Borough Mayor and Council, along with a recommendation for approval or disapproval of the license and the reasons, if any, for disapproval.

C.

Upon receipt of the application, the Mayor and Borough Council shall determine within 14 days or at its next public meeting, whichever is later, whether or not the applicant has complied with all the necessary standards and criteria, and if it shall so find, the license shall be issued to the applicant, and the applicant's name shall be placed at the end of the towing list. The applicant, or its representative, shall be given notice of the date on which the Mayor and Council shall consider the application and shall be permitted to appear and to be heard at that time. Written notice of the approval or denial of the application shall be provided to the applicant within seven days of the decision of the Mayor and Council.

§ 264-6 Issuance of license.

A.

Upon approval of the application as herein provided, the Borough Clerk shall issue for the applicant an official tower's license for each tow vehicle or flatbed vehicle to be utilized in providing services pursuant to this chapter by submitting such to the Chief of Police or his designee for submission to the official tower.

B.

Said licenses shall be delivered by the Chief of Police, or his designee to the approved towing company establishment, which shall be in the form approved by the Mayor and Council, and shall be displayed on the tow vehicle or flatbed vehicle at all times.

C.

Expiration; renewal; revocation.

(1)

Each official tower's license shall expire December 31 of every calendar year, and the license shall run for the calendar year only. Each applicant for an official tower's license or renewal shall apply for such license on or before October 1 of any calendar year for the next succeeding calendar year, and the license shall not be transferable or assigned and may be subject to revocation by the Mayor and Council for any of the following reasons:

(a)

If it is subsequently determined that the applicant knowingly and with intent to deceive made false, misleading or fraudulent statements of material fact in the application or in any other document required pursuant to this chapter.

(b)

Violation of any federal or state law or municipal ordinance or regulation relating to the operation of a motor vehicle or the provision of towing services.

(c)

Violation of any rule or regulation promulgated by the New Jersey Department of Insurance.

(d)

Violation of any provisions of this chapter.

(2)

No license shall be issued for less than a full calendar year nor should a license be issued at any time other than the period set forth above.

D.

Upon the expiration of an official tower's license, the applicant, prior to performing any service thereafter, shall refile completely for such official tower's license, setting forth all the information required in the form provided by the Borough Clerk and complying with the provisions of this chapter.

§ 264-7 Insurance.

A.

No towing license shall be issued under this chapter until the applicant has provided the following certificate(s) of insurance evidencing that there is in effect the following insurance coverage:

(1)

Garage liability insurance. The limit of liability shall not be less than \$500,000 combined single limit (bodily injury and property damage) per occurrence, including premises operations and products/completed operations.

(2)

Automobile liability insurance. The limit of liability shall not be less than \$500,000 combined single limit (bodily injury and property damage) per occurrence.

(3)

Garage keepers legal liability insurance. Physical damage insurance policies shall be specifically endorsed to provide "direct primary" insurance where applicable for vehicles in tow, possession of or storage on property owned or controlled by the tower.

(4)

Excess umbrella insurance. Limit of liability shall be not less than \$1,000,000 providing protection in excess of the garage and auto liability coverage of \$500,000. Note: this requirement may be waived if the limits of liability in Subsection A(1) or (2) above are not less than \$1,500,000 combined single limit.

(5)

On all liability policies, the Borough shall be listed as an additional insured, and insurance certificates shall indicate such coverage as primary coverage notwithstanding any insurance carried by the Borough.

(6)

Workers compensation insurance. Statutory coverage, including employer's liability coverage with a limit of at least \$500,000/\$500,000/\$500,000.

B.

The official tower shall have the duty to defend, hold harmless and indemnify the Borough and the public against any loss due to injuries, accidents or damages of any character whatsoever where any such damage is the result of an act or omission of the official tower, its agents, or employees in or due to the execution of all work and actions called for under this chapter.

C.

Certified copies of all insurance policies provided above or certificates thereof satisfactory to the Borough of Emerson shall be furnished forthwith. Each such policy or certificate shall contain a provision that it is not subject to change, cancellation or nonrenewal unless 30 days' prior written notice via certified mail, return receipt requested, shall have been given to the Borough of Emerson by the official tower's insurer. These must be received 30 days prior to the commencement of work.

D.

The providing of any insurance required herein does not relieve the official tower of any of the responsibilities or obligations assumed by the official tower for which the tower may be liable by law or otherwise.

E.

If any policies contain deductibles or co-payments, it shall be the responsibility of the tower to pay such sums at the same time a claim is settled by the tower's insurance company. The Borough shall not be responsible for the payment of any deductibles or co-payments under any policy of insurance issued to the official tower.

F.

If any policies contain limits of liability with an aggregate limit, the official tower or its insurance company shall provide the Borough, quarterly during the policy period, a statement evidencing the limits of liability required under this chapter to be in force.

G.

Failure to provide and continue in force such insurance as required above shall be deemed a major breach of the chapter and shall cause immediate termination of the official tower's license.

H.

All policies shall be written in either a company licensed to do business in the State of New Jersey or a New Jersey eligible Surplus Lines Company, with a minimum best rating of A-X. They shall be written on an ISO (Insurance Service Office) form or better.

§ 264-8 Minimum standards of performance.

To qualify for inclusion on the list of official towers, applicants must meet the following minimum standards:

A.

Minimum vehicle requirements; vehicle classes

(1)

Every official tower shall maintain and have available to render services required by this chapter a minimum of one regular tow vehicle with wheel lift and one flatbed vehicle. Flatbed vehicles must be equipped with a winch or hydraulically operated bed that slides or tilts to accommodate the transporting of vehicles. Each vehicle shall be owned or leased by the official tower. Registration documents shall be shown to the Borough certifying registration is the same or better than the gross vehicle weight (GVW) of the vehicle as plated on the vehicle.

(2)

(3)

Each applicant shall submit, along with its application, proof of ownership or lease of the vehicles that will be utilized to provide services pursuant to this chapter.

B.

Minimum equipment and reporting requirements.

(1)

Every tow vehicle or flatbed shall have two-way radio or cellular telephone capability with a dispatching center on a twenty-four-hour basis.

(2)

Every tow vehicle or flatbed shall be equipped with the following:

(a)

At least one amber rotating beacon or strobe light mounted on the highest practical location of the vehicles, visible from 360° when in use and visible at a minimum distance of 500 feet during daylight hours. An amber light permit, as required by the State of New Jersey, must be filed in the office of the Chief of Police and Borough Clerk.

(b)

Safety tow lights or magnetic tow lights for towing vehicles at night, amber or red colored.

(c)

Extra chains and cables for pulling or securing a towed vehicle.

(d)

At least one heavy-duty broom, a shovel, a crowbar or pry bar, a set of jumper cables, a flashlight, one two-pound or larger fire extinguisher of dry chemical type, one dozen flares or similar warning devices for placement at the scene of an accident or behind a disabled vehicle, at least 10 pounds of dry sand or a drying compound for gasoline and oil spilled on the roadway and containers for removal thereof and a sufficient quantity and types of tools to enable the tow vehicle operator to perform proper and adequate emergency repair services for the tow.

(3)

Every tow vehicle or flatbed vehicle shall comply with any and all state, federal and local laws, regulations and ordinances pertaining to safety, lighting, and towing equipment requirements and shall be subject to inspection by the Chief of Police or his designee at any time. Where applicable, all permits required by other agencies than the Borough shall be provided to the Borough upon the request of the Borough.

(4)

Every tow vehicle or flatbed vehicle shall have the name of the official tower permanently affixed, or by painted sign, prominently displayed on the outside panels of the vehicle (both sides). The sign shall be at least three inches in height and diameter, visible to the naked eye, and the names must be the same on both panels.

C.

Minimum personnel requirements. Official towers shall have available, 24 hours a day, seven days a week, a minimum of two drivers to provide the services required by this chapter. All drivers employed by official towers to provide services covered by this chapter shall meet the following requirements and be subject to the following regulations:

(1)

Be competent and able to provide minimum road service for disabled vehicles.

(2)

Have a valid commercial driver's license under the laws of the State of New Jersey.

(3)

Obey all traffic laws and regulations.

(4)

Not have been convicted of a crime within the past year.

(5)

Any other requirements as set forth elsewhere in this chapter.

D.

Minimum storage requirements.

(1)

Every official tower shall maintain an inside building and outside secured storage area meeting the following requirements:

(a)

All official towers must have sufficient storage area on their own premises to store towed vehicles at the licensed site. This area can not include, and must be in addition to, the area required for parking on that site. No vertical stacking of vehicles is permitted. Each tow vehicle must be stored at the official tower's licensed site. All official towers located within the Borough cannot store vehicles on the thoroughfares of the Borough, whether under the auspices of the Borough, County of Bergen or State of New Jersey, without Borough approval. Storage of vehicles on the thoroughfares of other municipalities wherein Borough towers are located is subject to the requirements of those municipalities.

(b)

The location of the storage area shall be either within the limits of the Borough or in those municipalities that are within three miles from the border of the Borough.

(c)

The storage areas shall be available 24 hours per day, 365 days per year and shall be open to the public on weekdays during normal business hours and for limited hours on weekends. The applicant shall prominently display the hours during which the facility will be open on weekends either on its vehicle(s) or storage area and on the receipt given to the person whose vehicle has been towed. On the application for a towing license, the applicant shall list all business hours required pursuant to the subsection for the calendar year of the license in question, which shall not be changed within that calendar year.

(f)

The official tower shall have an employee on duty during all hours in which the storage facility is open. While the official tower is serving on his rotation week and as the first backup, the official tower shall be available for vehicle pickup 24 hours a day; at other times, the tower shall be available for pickup of vehicles between 7:00 a.m. and 12:00 midnight.

(g)

The official tower shall not charge any additional fee or other charge for releasing vehicles to their owners after normal business hours or on weekends or for moving a vehicle from one location to another in the storage area and/or any other location to anywhere else.

(2)

The official tower shall, with its application, submit proof of ownership or lease of the storage area.

(3)

The official tower shall be responsible for ensuring the proper and safe storage of all vehicles towed pursuant to this chapter. The official tower shall be liable for any damage incurred by such vehicles while in transit to or while stored in the storage areas.

E.

The tower shall release a vehicle with Police Approval to the owner/occupier of the vehicle no later than one hour from the vehicle's arrival at the tower's facility or within one hour of being contacted by the owner/occupier of the vehicle that he or she wishes to take possession of the vehicle.

§ 264-9 Order of list of official towers; rotation.

Once the initial list of towing companies has been established, new official towers, when their applications have been approved, will be added at the end of that list.

B.

The Borough shall accept and place on its rotating list of towing operators the number of operators specified by resolution as necessary from those towing companies that submit completed application forms that comply with all requirements of this Chapter. Selection shall be on a "first come, first served" basis; however, for renewals preference shall be given to existing operators in good standing.

C.

The Borough shall request wrecking, towing and storage services from each official tower in rotation. When called, the tower shall advise the dispatcher if a vehicle is available and the estimated time of arrival. If no tow vehicle is available, or the estimated time of arrival will exceed 10 minutes, the next official tower on the list shall be called. If none of the official towers are available or able to provide services as are requested by the Borough, the Borough may request such services from any other available source. All requests shall be made by the Chief of Police or his designee.

D.

The Borough shall request service only from official towers; provided, however, that if no emergency or road hazard exists, the Chief of Police or his designee shall request such service from such other person as the owner of the motor vehicle in need of such services may request, provided that service is responded to within 30 minutes.

E.

During adverse weather conditions, heavy traffic conditions or emergency conditions, official towers shall give priority to requests from the Borough over any other requests that may be received by the official towers.

§ 264-10 Towing and storage fee schedule.

A.

Fees for towing and storage of private automobiles damaged in an accident or recovered after being stolen may not exceed the fees established by the Department of Insurance, if any. In the event the fees are enacted and/or revised by the Commissioner of Insurance, the enacted or revised fees shall be the maximum fees that may be charged by the official towers, and this chapter shall be amended accordingly.

(1)

The following is the fee schedule for towing services not covered by N.J.S.A. 17:33B-47 and N.J.A.C. 11:3-38.1:

Times and Dates

Day of tow, 8:00 a.m. to 6:00 p.m. 7 miles or less from point of tow, one way
Nights after 6:00 p.m., weekends and New Jersey state holidays
Each additional mile after 7 miles from point of tow, one way
Police impounds (towing of vehicle to police facilities)

Towing Fee(per diem)

\$55.00
\$75.00
\$2.00
No charge

(2)

The following is the fee schedule for storage services:

Storage Facility

Capacity

Per-Diem Charges

Indoor, secured \$35.00 per day, or any part thereof. Commencing 12:01 a.m. or 12 hours after tow, whichever is later
Outdoor, secured \$25.00 per day or any part thereof. Commencing 12:01 a.m. or 12 hours after tow, whichever is later

B.

The above portion of § 264-10A does not regulate towing or storage of trucks or buses. Such services shall be provided and referred by the official tower(s) at the following

rates:

(1)

Vehicles from, 7,000 pounds up to 14,999 pounds, \$200. Said charge covers all actions necessary and related to towing vehicles up to 14,999 pounds; hookup front or rear, plus \$2 per mile for all miles in excess of seven miles.

(2)
Vehicles and trucks and trailers of 15,000 to 50,000; \$300. Said charge covers all actions necessary and related to towing vehicles between 15,000 pounds and 50,000 pounds; hook up front or rear, plus \$2.50 per mile for all miles in excess of seven miles.

(3)
Charge for heavy-duty under reach: \$350. Said charge covers all actions necessary and related to towing vehicles in excess of 50,000 pounds; hook-up front or rear, plus \$4.50 per mile for all miles in excess of seven miles.

(4)
Use by official tower(s) of all trailer (low-boy): \$200 for the first hour, plus \$200 per hour for each additional hour.

(5)
Storage rates for vehicles described in Subsection B shall be at the same rate as provided in Subsection A above.

(6)
Winching of any vehicle will be charged at a rate of \$25 per hour, with a maximum fee of \$75. This charge shall only be used in situations deemed necessary, and a notation of fact should be noted on the official tower's bill. Said charge shall not apply to winching a vehicle on to a flatbed vehicle.

(7)
If an accident required the clean-up of an accident site beyond the first hour from arrival on the scene of the accident by the tower, the tower shall be entitled to \$20 per hour for such clean-up services only in addition to the cost of "Speedy Dry" material used in said clean-up.

(8)
If the towing company is called upon to change the tire of a stranded motorist, the charge shall be \$25.

(9)
If the towing company is called upon to provide gas, antifreeze and/or water to a stranded motorist, the charge shall be \$15.

(10)
If the towing company is called upon to provide a "jump start" to a stranded motorist, the charge shall be \$20.

C.
The fees set forth on the schedules for towing rates are the maximum charges that shall apply to a private automobile for basic towing services. There shall be no additional charges other than those provided herein in Subsections A and/or B above. Nothing herein contained to the contrary notwithstanding, all official towers shall be permitted to provide lockout assistance and the like. The licensed tower will provide on an annual basis a copy of rates for such services to the Borough Clerk and Police Department.

D.
Calculation of rates and fees.

(1)
The towing mileage rates, where applicable, shall be calculated based on the total distance traveled from the site of pickup of the vehicle in question to the dropoff point by way of the shortest available route. Fractions shall be rounded up to the nearest whole. The first seven miles shall not be subject to the mileage charge.

(2)
Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.

(3)
When towing services are required at the scene of an automobile accident, the day rate shall apply when the time of the accident is between 7:00 a.m. and 6:00 p.m., Monday through Friday, except New Jersey state holidays. The night, weekend and holiday rate shall otherwise apply.

(4)
When towing services are otherwise required, the day rate shall apply when the time of the incident is called into police headquarters or 911, whichever is applicable, between 7:00 a.m. and 6:00 p.m., Monday through Friday, except New Jersey state holidays. The night, weekend and holiday rate shall otherwise apply.

E.
No storage of any disabled or damaged vehicle shall be located on any public street or thoroughfare in the Borough.

F.
The fees set forth on the schedules in the section for storage fees are the maximum storage charges per twenty-four-hour period that shall apply to all vehicles stored by an official tower.

G.
Motorcycles and all other on/off-the-road vehicles shall be considered private passenger automobiles for purposes of determining fees which are allowed under this section. Any other objects not covered herein, which are towed by an official tower at the request of the Borough, shall be subject to fees as determined by the Borough.

H.
"SpeedyDry" shall be charged to the owner(s) of the vehicle(s) that caused the utilization of same at the cost of purchase of that substance by the tower.

I.

Official towers shall be responsible for removing all broken glass and/or other nonhazardous debris from the street as a result of a traffic accident to which he is summoned by the Borough. The debris shall be placed in a suitable container and removed by the official tower and shall in no instance be left at curb side.

J.

The tower shall accept major credit cards and auto club membership, such as AAA and MCA.

§ 264-11 Miscellaneous provisions.

A.

In the event that a complaint is received by the Borough, through either the Borough Police Department (of a noncriminal nature) or the Borough Clerk, involving the alleged violation of any part of this chapter, the Borough Clerk shall give written notice of said complaint, by certified mail, return receipt requested, to the official tower against whom the complaint is made. Said notice will be mailed within 72 hours of the receipt of the complaint, not counting legal holidays. The official tower shall make a written response to such complaint within five calendar days from receipt of the written notice.

B.

The Chief of Police, after hearing the matter, shall make a determination as to whether or not the complaint was justified. If the complaint was justified, the Chief of Police shall have the authority to enforce the penalties under Subsection F and § ~~264-12~~(A) below, and as set forth elsewhere in this chapter. Further appeal of the Chief of Police's action with respect to the suspension of the tower's license or revocation of the tower's license shall be to the Mayor and Council. A licensed tower wishing to appeal a decision of the Chief of Police must file a written request for a hearing with the Mayor and Council within 10 days of receipt of the Chief's decision. The Mayor and Council may hear the appeal or may appoint a committee of three or more individuals, all of whom must be residents of the Borough of Emerson. The hearing shall take place within 21 days after receipt of the licensed tower's request for hearing. An affirmative vote of a majority of the Mayor and Council is required to sustain a decision of the Chief of Police. Further appeal of the Chief of Police's actions with respect to fines imposed in accordance with this Chapter shall be to the Borough's Municipal Court by filing a written request for a hearing as is done when appealing any other fine imposed by Borough ordinance.

C.

In the event that two or more complaints are pending for over 30 days in Municipal Court, then the Borough may suspend the official tower's license after a hearing and decision by the Mayor and Council.

D.

If, after considering the matter and the findings by the Chief of Police, the Mayor and Council shall determine that there is good and sufficient cause for revocation of the official tower's license, the tower shall surrender said license to the Borough Clerk within one calendar day.

E.

Failure to surrender the license upon revocation shall constitute a violation of this chapter, subject to all legal action available to the Borough, including permanent removal from the official towers list.

F.

Action.

(1)

In addition to the foregoing procedures, in the event that the tower fails to comply with any major terms or conditions of this chapter, or charges fees in excess of those set forth in this chapter, the Chief of Police shall have the authority to take the following actions:

(a)

First offense: issue a letter of warning detailing the violation of this chapter.

(b)

Second offense: suspend the official tower's operations under the chapter for one month and utilize alternate official towers during this period.

(c)

Third offense: revoke the tower's license for the remainder of the year under this chapter.

(2)

For the benefit of both the official tower and the Borough, it is desirable to provide remedies short of suspension or cancellation of the official tower's services. Therefore, violations of the following provisions shall be deemed minor violations: identification of vehicles or employees, equipment or facilities, personnel, conduct, availability and response time, and site clean-up. Minor violations shall be handled on an informal, verbal basis; however, three minor violations of a similar nature will be treated as a major violation and shall trigger a written letter of warning and, if necessary, the subsequent sanctions for a major violation.

G.

Nothing contained herein shall prevent or limit the right of any person to commence or maintain an action for damages or any other relief directly against an official tower in a court of competent jurisdiction.

H.

The license required by this chapter shall not be transferred or assigned without the prior written consent of the Chief of Police and the Mayor and Council.

I.

If any part of this chapter or the application thereof to any person or circumstances shall, for any reason, be adjudged invalid by a court of competent jurisdiction, such judgment shall not invalidate or affect the remainder of this chapter which is hereby declared to be severable.

§ 264-12 Violations and penalties.

In addition to any suspension or revocation of license, a person who shall violate any of the provisions of this chapter shall be subject to a fine of \$1,000 for each major violation under this chapter and \$250 for each minor violation under this chapter. Each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

§ 264-13 Severability.

The provisions of this chapter are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this chapter.

§ 264-14 Effective date.

This chapter shall become effective April 29, 2003

ATTEST:

Carol Dray, RMC CMC CMR

Borough Clerk

Carlos Colina

Mayor