

ORDINANCE NO. 04-09-2015-01

FREELAND BOROUGH, LUZERNE COUNTY, PENNSYLVANIA

AN ORDINANCE OF FREELAND BOROUGH, LUZERNE COUNTY,
PENNSYLVANIA, ESTABLISHING PROCEDURES FOR TOWING
AND TOWING STORAGE AND THE SELECTION OF TOW TRUCK OPERATORS
AND PROSCRIBING FINES AND SUSPENSIONS FOR VIOLATIONS

Chapter 15
Motor Vehicles

Part 12
Towing and Towing Storage

Section 1201. Short Title. This Ordinance shall be known and may be cited as the "Freeland Towing and Towing Storage Facility Ordinance".

Section 1202. Purpose. The purpose of this Ordinance is to establish procedures governing tow truck operators, including criteria for the selection of tow truck operators, while complying with the Pennsylvania Towing and Towing Storage Facilities Standards Act, and protecting the public and appropriate enforcement of state and local laws.

Section 1203. Definitions. The following words and phrases when used in this Part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) Authorized Municipal Personnel- includes any member of the Freeland Police Department, any Code Enforcement Officer, the Street Foreman, or the Fire Chief.

(b) Chief of Police- means the Freeland Police Department Chief of Police appointed by Freeland Borough Council.

(c) Tow Truck Operator- means a person performing towing in Freeland Borough, including the owner or operator of towing equipment.

(d) Towing- means the moving, removing or recovery of a motor vehicle, regardless of whether the vehicle owner or operator consents to the moving, removal or recovery of a motor vehicle and for which a fee, not including dues to a club or association which provides such services, is charged.

(e) Towing storage facility- means the location where a motor

vehicle has been towed as a result of a motor vehicle accident and is securely stored pursuant to an agreement with the tow truck operator who has towed the vehicle.

Section 1204. Standards for Tow Truck Operators Selected by the Vehicle Owner or Vehicle Operator. The following standards shall apply to tow truck operators and operators of a towing storage facility when summoned or selected by the vehicle owner or vehicle operator:

(a) General Requirements. A tow truck operator and, where applicable, the operator of a towing storage facility, shall:

- (1) Maintain a physical street address;
- (2) Properly register the tow truck with the Pennsylvania Department of Transportation;
- (3) Display the name, address and telephone number of its tow truck business on the tow truck; and
- (4) Post the towing fees and the storage and related service fees and hours of operation at the towing storage facility.

(b) Time of Notice. At the scene of an accident, a tow truck operator shall provide the owner or operator of the vehicle if the owner or operator is at the scene with a notice containing the name, address and telephone number for a point of contact to be informed where the vehicle is to be stored.

(c) Accident. A tow truck operator shall undertake towing at the scene of a motor vehicle accident only if summoned to the scene by the vehicle owner or vehicle operator, or law enforcement personnel or authorized municipal personnel when directed by the vehicle owner or vehicle operator, and is authorized to perform the towing as follows:

- (1) The owner or operator of the vehicle being towed shall summon to the scene the tow truck operator of the owner's or operator's choice in consultation with law enforcement or authorized municipal personnel and designate the location where the vehicle is to be towed.
- (2) The provisions of paragraph (1) shall not apply when the owner or operator is incapacitated, otherwise unable to summon a tow truck operator or defers to law enforcement or authorized municipal personnel.
- (3) The authority provided to the owner or operator in paragraph (1) may be superseded by the law enforcement officer or authorized municipal personnel

if the tow truck operator of choice cannot respond to the scene in a timely fashion and the vehicle is a hazard, impedes the flow of traffic or may not legally remain in its location in the opinion of law enforcement or authorized municipal personnel.

(d) Repair and Storage. As a condition of towing a vehicle at the scene of an accident and prior to the towing, a tow truck operator shall not:

- (1) Secure the signature of the vehicle owner or vehicle operator on a document that requires authorization to repair the vehicle; or
- (2) Secure the signature of the vehicle owner or vehicle operator to authorize storage of the vehicle for more than 24 hours.

(e) Release of Towed Vehicle. Upon a request from the vehicle owner or a person authorized by the owner to regain possession, a tow truck operator or operator of a towing storage facility shall not refuse during the posted hours of operation to release a towed motor vehicle unless law enforcement has requested that the vehicle be held. Release shall be conditioned on the payment for towing, storage and related services. All charges shall be itemized and in writing. Payment may be made with cash, a credit card from a common issuer, or a check from an insurance company or authorized tower or salvor acting on behalf of the insurance company.

(f) Access to Vehicle. A tow truck operator or towing storage facility shall provide hours of operation that reasonably allow access to a towed vehicle and shall grant reasonable access to the towed vehicle during its posted hours of operation for the purpose of inspection and retrieval by law enforcement officials or authorized municipal personnel, the vehicle owner or a person authorized by the owner under this Part.

(g) Storage Fee Prohibited. Unless law enforcement has requested that a vehicle be held, a tow truck operator or towing storage facility shall not charge a storage fee for any period during which it has refused reasonable access during posted normal business hours as required in subsection (e) or has refused to allow authorized inspection of the vehicle under inspection rights in 75 Pa.C.S. § 1799.4 (relating to examination of vehicle repairs) or section 11 of the act of December 29, 1972 (P.L.1713, No.367), known as the Motor Vehicle Physical Damage Appraiser Act.

Section 1205. Standards for Tow Truck Operators Selected by the Law Enforcement Officials or Authorized Municipal Personnel. The following standards shall apply to tow truck operators and operators of a towing storage facility

when summoned or selected by law enforcement officials or authorized municipal personnel:

(a) General Requirements. A tow truck operator and, where applicable, the operator of a towing storage facility, shall:

- (1) Maintain a business with a physical street address that is open at least 40 hours per week, Monday through Friday, between the hours of 8:00 a.m. and 4:00 p.m.;
- (2) Maintain a business phone and are directly accessible by telephone 24 hours per day seven days a week;
- (2) Properly register the tow truck with the Pennsylvania Department of Transportation;
- (3) Display the name, address and telephone number of its tow truck business on the tow truck;
- (4) Post the towing fees and the storage and related service fees (as preapproved by resolution of Freeland Borough Council through the Request for Proposal Process) and hours of operation at the towing storage facility;
- (5) Maintain liability insurance, ensuring compliance with the Pennsylvania Vehicle Code and Federal Motor Carrier Safety Regulations, as appropriate, and maintain garage keeper's insurance in the minimum of \$250,000.00;
- (6) Provide a secure indoor alarmed storage facility capable of storing at least three vehicles that is capable of being locked and prevents general access to vehicle as well as providing cover and protection from exposure of the elements;
- (7) Provide a secured fenced storage lot with locked gate to prevent general access to vehicles; and
- (8) Provide a response time of 30 minutes measured from the time of the call for towing to arrival at the scene.

(b) Time of Notice. At the scene of a tow, a tow truck operator shall provide the owner or operator of the vehicle if the owner or operator is at the scene with a notice containing the name, address and telephone number for a point of contact to be informed where the vehicle is to be stored.

(c) Procedures. The Chief of Police shall review all applications of tow truck operators for towing and towing storage to ensure compliance with the general requirements of this Ordinance. The Chief of Police shall place the names of all tow truck operators that comply with the general requirements of this Ordinance and whose towing and towing storage fees have been determined to be reasonable and customary by Freeland Borough Council on a rotation list. The towing rotation is set by the Chief of Police based upon a monthly rotation schedule starting Sunday at 12:00

a.m. and running seven consecutive days ending at 11:59 p.m. on Saturday. The Chief of Police shall inform Luzerne County 911 and the members of the Freeland Police Department of the rotation schedule. Luzerne County 911 and the members of the Freeland Police Department shall be responsible for keeping track of the rotation schedule.

(d) Exception to Procedure. The Police Chief, any member of the Freeland Police Department or any authorized municipal personnel may deviate from the rotation schedule when the tow truck operator called does not possess the equipment necessary to provide the necessary towing or recovery service.

(e) Suspension. The Chief of Police shall be authorized to suspend a tow truck operator from the rotation schedule under the following circumstances and for the following periods:

- (1) Three instances of inability to respond to a call within a 12 month period (1 year suspension).
- (2) Failure to comply with the standards of this Ordinance (first offense-6 month suspension; second offense- 1 year suspension; and third and subsequent offense- 3years suspension).
- (3) Furnishing false information (1 year suspension for unintentional omission; and lifetime for intentionally providing materially false information).
- (4) Overcharging for towing and towing storage in violation of the resolution approved by Freeland Borough Council (3 year suspension).

(f) Release of Towed Vehicle. Upon a request from the vehicle owner or a person authorized by the owner to regain possession, a tow truck operator or operator of a towing storage facility shall not refuse during the posted hours of operation to release a towed motor vehicle unless law enforcement has requested that the vehicle be held. Release shall be conditioned on the payment for towing, storage and related services. All charges shall be itemized and in writing. Payment may be made with cash, a credit card from a common issuer, or a check from an insurance company or authorized tower or salvor acting on behalf of the insurance company.

(g) Access to Vehicle. A tow truck operator or towing storage facility shall provide hours of operation that reasonably allow access to a towed vehicle and shall grant reasonable access to the towed vehicle during its posted hours of operation for the purpose of inspection and retrieval by law enforcement officials or

authorized municipal personnel, the vehicle owner or a person authorized by the owner under this Part.

(h) **Storage Fee Prohibited.** Unless law enforcement has requested that a vehicle be held, a tow truck operator or towing storage facility shall not charge a storage fee for any period during which it has refused reasonable access during posted normal business hours as required in subsection (e) or has refused to allow authorized inspection of the vehicle under inspection rights in 75 Pa.C.S. § 1799.4 (relating to examination of vehicle repairs) or section 11 of the act of December 29, 1972 (P.L.1713, No.367), known as the Motor Vehicle Physical Damage Appraiser Act.

Section 1205. Violations.

(a) Any tow truck operator who fails to comply with any of the sections of this Ordinance shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars and no more than Three Hundred (\$300.00) Dollars plus the costs of prosecution, and, in default of payment of fine and costs, to imprisonment for a term of not more than thirty (30) days. The fine or penalty imposed under this section may be in addition to any towing and storage fees or any suspension. Each day that a violation continues shall be deemed a separate offense.

(b) A violation of this Ordinance is also a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

Section 1206. Coordination of laws.

(a) **Other Freeland Borough Ordinances.** This Part supersedes other Freeland Borough ordinances only to the extent that those ordinances regulate towing and storage operations that are in conflict with and less stringent than this Part.

(b) **Criminal investigations.** This Part shall not supersede or otherwise cause interference with any Federal or State criminal investigation or prosecution.

(c) **Federal and State law.** If any portion of this act is preempted or superseded by Federal or State law or is declared invalid by any court of competent jurisdiction, the remainder of this act shall remain in effect.

Section 1207. Effective date. This Ordinance shall take effect immediately upon its adoption.

ADOPTED by Freeland Borough Council, this 9 day of April, 2015.

ATTEST:

Ann Marie Durange
Ann Marie Durange, Secretary

FREELAND BOROUGH COUNCIL:

David Mahon
David Mahon, President

APPROVED BY THE MAYOR:

Ed Appelman
Ed Appelman, Mayor