

**BOROUGH OF PENNINGTON
ORDINANCE 2013 - 10**

**AN ORDINANCE REGULATING THE TOWING AND STORAGE OF MOTOR
VEHICLES AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON**

1. PURPOSE.

To establish rules and regulations, pursuant to N.J.S.A. 40:48-2.49, N.J.A.C 13:45A-31 and N.J.A.C. 17:33-47 and 48, for the towing and storage of motor vehicles damaged in accidents, utilized in the commission of crimes, recovered after being stolen, or otherwise impounded by the police department, from public roadways by operators engaged in the business of towing and storing motor vehicles.

2. SCOPE.

The provisions of this chapter shall apply to those businesses that engage in the towing and storage of motor vehicles within the borough through the police department.

3. DEFINITIONS.

- a. *"Abandoned vehicle"* shall mean a vehicle which the owner or operator leaves on a public roadway and fails to notify the police and does not attempt to repair and remove the same within a reasonable period of time.
- b. *"Accident vehicle"* shall mean a motor vehicle which has been involved in an accident.
- c. *"Basic tow"* means private property towing and other non-consensual towing as defined in this section and other ancillary services that include the following: arriving at the site from which a motor vehicle will be towed; 15 minutes waiting time; hooking a motor vehicle to, or loading a motor vehicle onto, a tow truck; transporting a motor vehicle to a storage facility; unhooking or unloading a motor vehicle from the tow truck; and situating the motor vehicle in the space in which it will be stored. "Basic tow" also includes issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; issuing an itemized bill; three trips to the motor vehicle in storage, which, if applicable, include making a vehicle available to an insurance appraiser or adjuster; issuing documents for the release of a motor vehicle to its owner or other person authorized to take the motor vehicle; and retrieving a motor vehicle from storage during the hours in which the storage facility is open.
- d. *"Consensual towing"* means towing a motor vehicle when the owner or operator of the motor vehicle has consented to have the towing company tow the motor vehicle.
- e. *"Consumer"* means a natural person.
- f. *"Decoupling"* means releasing a motor vehicle to its owner or operator when the motor vehicle has been, or is about to be, hooked to or lifted by a tow truck, but prior to the motor vehicle actually having been moved or removed from the property.
- g. *"Disabled vehicle"* shall mean any motor vehicle which is unable to operate under its own power.
- h. *"Flat bed tow truck"* means a tow truck designed to transport a motor vehicle by means of raising the motor vehicle from road level up onto a hydraulic bed for transporting purposes.
- i. *"Heavy-duty recovery"* shall mean that recovery of any motor vehicle over 10,000 pounds gross vehicle weight which requires the vehicle to be up righted or recovered from either on or off the traveled portion of a public roadway.
- j. *"Heavy-duty towing"* shall mean the towing of any motor vehicle over 10,000 pounds gross vehicle weight.

- k. *"Impounded vehicle"* shall mean a vehicle which, at the direction of the police department is taken into police custody because the operator of the vehicle was engaged in a violation of the law, including but not limited to the operator being arrested on a DWI charge; operator has been arrested for driving without registration or insurance; the operator has been arrested for stealing the motor vehicle; vehicle involved in a serious accident, e.g.; death by auto.
- l. *"Light-duty towing"* shall mean the towing of any motor vehicle up to 10,000 pounds gross vehicle weight.
- m. *"Motor vehicle"* includes all vehicles propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.
- n. *"Non-consensual towing"* means the towing of a motor vehicle without the consent of the owner or operator of the vehicle. "Non-consensual towing" includes towing a motor vehicle when law enforcement orders the vehicle to be towed whether or not the owner or operator consents.
- o. *"Person"* means an individual, sole proprietorship, partnership, corporation, limited liability company or any other business entity.
- p. *"Private property towing"* means non-consensual towing from private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is parked illegally, parked during a time at which such parking is not permitted or otherwise parked without authorization or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A. 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A. 39:4-56.6.
- q. *"Private property towing company"* means a person offering or performing private property towing services.
- r. *"Secure storage facility"* means a storage facility that is either completely indoors or is surrounded by a fence, wall or other man-made barrier that is at least six feet high and is lighted from dusk to dawn.
- s. *"Site clean-up"* means the use of absorbents to soak up any liquids from a motor vehicle at the site from which a motor vehicle will be towed.
- t. *"Storage facility"* means a space at which motor vehicles that have been towed are stored.
- u. *"Storage rates"* shall mean fees charged for the storage of motor vehicles.
- v. *"Tarping"* means covering a motor vehicle to prevent weather damage.
- w. *"Tow truck"* means a motor vehicle equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of motor vehicles.
- x. *"Towing"* means the moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's non-commercial motor vehicle that is damaged as a result of an accident or otherwise disabled, recovered after being stolen or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted or otherwise parked without authorization or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations, which provide towing services to club or association members, shall not be considered a service charge for purposes of this definition.
- y. *"Towing company"* means a person offering or performing towing services.
- z. *"Towing list"* shall mean a rotating list of all towing services registered with the borough kept by the borough public safety director. When the police require the towing and

storage of a motor vehicle from public roadways, they shall contact the towing service on the top of the rotating towing list as determined by this chapter.

- aa. *"Towing rates"* shall mean fees charged by a towing service for removal and transportation of the vehicle.
- ab. *"Towing service"* shall mean a business engaged in the towing or storing of motor vehicles which has been approved for the towing list.
- ac. *"Towing vehicle"* shall mean a motor vehicle employed by the towing service for the purpose of towing, transporting, conveying or removing of motor vehicles from public roadways.
- ad. *"Transmission disconnect"* means manipulating a motor vehicle's transmission, so that the motor vehicle may be towed.
- ae. *"Vehicle"* means any device in, upon or by which a person or property is or may be transported upon a highway.
- af. *"Waiting time"* means any time a towing company spends at the site from which a motor vehicle will be towed, during which the towing company is prevented from performing any work by another individual, beyond the time included as part of a basic tow.
- ag. *"Winching"* means the process of moving a motor vehicle by the use of chains, nylon slings or additional lengths of winch cable from a position that is not accessible for direct hook up for towing a motor vehicle. "Winching" includes recovering a motor vehicle that is not on the road and righting a motor vehicle that is on its side or upside down, but does not include pulling a motor vehicle onto a flatbed tow truck.
- ah. *"Window wrap"* means any material used to cover motor vehicle windows that have been damaged.

4. TOWING SERVICE REGISTRATION.

- a. No towing service shall be placed upon the towing list for the towing or storing of motor vehicles within the borough, unless the towing service shall first register with the borough. In order to be placed upon the towing list for light-duty towing, a towing service must be located within five miles of the geographic center of Pennington Borough or within Hopewell Township, Pennington Borough or Hopewell Borough. Registration applications shall be made available by the borough police department. A towing service that has met all the specifications and requirements of this chapter and has registered with the borough shall be placed on the towing rotation list by the director of public safety. No towing service on the Pennington Borough police department towing rotation list shall exceed the fees set forth in the attached fee schedule, as adjusted annually effective July 1 of each year pursuant to 6.b. below.
- b. The towing service owner or its authorized representative shall sign the registration application form indicating that the full requirements of this chapter have been met by the towing service applicant.
- c. If any information provided by a towing service in its registration application changes, the towing service is responsible for notifying the police department of the change in the registration information within 30 days of such change. Failure to comply with this provision will be deemed a violation of the chapter.

5. INSURANCE.

- a. The minimum amounts of insurance a towing company shall secure and maintain are:
 - 1. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is up to 26,000 pounds, for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of \$ 750,000, single limit; and
 - 2. Motor vehicle liability for a tow truck capable of towing a motor vehicle that is more than 26,000 pounds, for the death of, or injury to, persons and damage to

property for each accident or occurrence in the amount of \$ 1,000,000, single limit.

- b. A towing company shall also secure and maintain, for every tow truck, insurance that covers garage keeper legal liability in the amount of \$ 100,000, and "on-hook" coverage, either as an endorsement on the insurance required by (a) above or in the amount of \$ 100,000.
- c. The insurance required by (a) and (b) above shall be obtained from an insurance company authorized to do business in New Jersey.

6. RATES AND FEES.

a. Fees and rates for towing and storage of motor vehicles damaged in accidents, utilized in the commission of crimes, recovered after being stolen, or otherwise impounded by the police department, shall not exceed the limits set forth in the attached fee schedule, as adjusted annually effective July 1 each year pursuant to 6.b.below.

b. All fee limits set by this section shall be increased or decreased by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index (CPI) for the Philadelphia Metropolitan Area. The first adjustment shall be made on July 1, 2014 and each year thereafter.

c. Fees and services covered by this ordinance:

1. Basic tow, which shall be a flat fee; and

2. In the case of a motor vehicle involved in an accident the following additional services, if actually performed:

i. Waiting time in excess of 15 minutes, which shall be calculated based upon each 15 minutes spent at the site from which a motor vehicle will be towed, with fewer than 15 minutes rounded up to 15;

ii. Brush cleaning, including collection of debris that can be picked up by hand, which shall be a flat fee;

iii. Site clean-up, which shall be calculated based upon the number of bags of absorbent used;

iv. Winching, which shall be based upon each one-half hour spent performing winching;

v. The use of window wrap, which shall be a flat fee;

vi. Tarping, which shall be a flat fee;

vii. Transmission disconnect, a flat fee, which shall be charged only if a motor vehicle is locked and the towing company is unable to obtain the keys for the motor vehicle;

viii. Use of a flat bed tow truck, a flat fee, which shall be charged if a motor vehicle can be transported only by a flat bed tow truck;

ix. Use of special equipment other than the first tow truck to recover a motor vehicle that cannot be recovered by winching or pieces of a motor vehicle that cannot be moved by hand, which may be both a labor and an equipment charge billed in half-hour increments;

x. Decoupling;

xi. Storage at a towing company's storage facility;

xii. More than three trips to the motor vehicle in storage, which may be invoiced as an administrative fee, which shall be a flat fee; and

xiii. Releasing a motor vehicle from a towing company's storage facility after normal business hours or on weekends, which shall be a flat fee.

d. A towing company that engages in private property towing or other non-consensual towing shall not charge for the use of a flat bed tow truck if a motor vehicle can safely be towed in an upright position by another type of tow truck, even if the private property towing company chooses to use a flat bed tow truck for the tow.

e. A towing company that engages in private property towing or other non-consensual towing shall calculate storage fees based upon full 24-hour periods a motor vehicle is in the storage facility. For example, if a motor vehicle is towed to a storage facility at 7:00 P.M. on one day and the owner of the motor vehicle picks up the motor vehicle before 7:00 P.M. the next day, the towing company shall charge the owner of the motor vehicle only for one day of storage. If a motor vehicle is stored for more than 24 hours, but less than 48 hours, the towing company may charge for two days of storage.

f. A towing company shall not charge any fee for private property towing or other nonconsensual towing and related storage services not included in (c) above.

g. If a towing company charges a consumer a fee for a private property or other non-consensual towing service that is disputed by the consumer, the parties shall use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute and the borough administrator determines the fee to be unreasonable under this ordinance or N.J.A.C. 13:45A-31.5, the borough administrator may order the towing company to reimburse the consumer for an amount equal to the difference between the charged fee and a reasonable fee, plus interest, as calculated pursuant to (h) below.

h. The interest rate imposed pursuant to (g) above shall be based on the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment of the Department of the Treasury.

i. A towing company performing a private property tow or other non-consensual tow shall take the motor vehicle being towed to the towing company's storage facility having the capacity to receive it that is nearest to the site from which the motor vehicle is towed.

j. A bill for a private property tow or other non-consensual tow shall include the time at which a towed motor vehicle was delivered to a towing company's storage facility.

k. Unreasonable fees

1. A fee for private property towing or other non-consensual towing services, and storage services, shall be presumed unreasonable if it is:

i. More than 25 percent higher than the fee charged by the towing company or storage facility for the same services when provided with the consent of the owner or operator of the motor vehicle; or

ii. More than 50 percent higher than the fee charged for such other non-consensual towing or related storage service by other towing companies or storage facilities operating in the municipality from which the vehicle was towed.

2. Notwithstanding (a) above, a fee will be presumed unreasonable if it exceeds the maximum amount that may be charged for the service according to a schedule of fees set forth in this ordinance adopted pursuant to section 1 of P.L. 1979, c. 101 (N.J.S.A. 40:48-2.49).

7. RULES AND REGULATIONS.

a. All towing services placed on the police department towing list shall be available to respond to a police request for a tow 24-hours a day, seven days a week, including holidays.

b. All towing companies shall respond to a call in any part of the borough within 30 minutes. If a towing company does not respond within 30 minutes of a call, the towing company next on the list shall be called and entitled to provide services as needed, and the first towing company shall lose any claim to compensation.

c. All drivers and operators of towing vehicles shall be properly licensed to operate a motor vehicle within the State of New Jersey and are subject to driver's license checks by the borough police department at the time of registration and at least on an annual basis thereafter. All drivers and operators of towing vehicles shall be Certified Towing Operators by one of the two nationally recognized towing safety organizations – WreckMaster or Towing and Recovery Association of America. All towing vehicles shall be properly registered and inspected in accordance with any applicable law.

d. All applicants and/or agents must submit to a criminal history check in compliance with the New Jersey State Police Criminal Information Unit, State Bureau of Identification (SBI form 212B). The applicant or agent shall not have received a criminal conviction within the last seven years for any indictable offense or any offense involving stolen or embezzled vehicles, fraud relating to the towing business, stolen property, or any other offense of similar nature.

e. All vehicles must be towed in a safe manner.

f. All towing companies shall be capable of providing reasonable roadside services to disabled vehicles such as, but not limited to, jump-starting, changing of flat tires and providing fuel. Such services will only be performed if they can be done so safely, as determined by the police officer on the scene.

g. All towing companies shall make available a copy of its basic rates and a business card to all owners and operators of motor vehicles which will be towed.

h. Towing companies shall not remove any motor vehicle which has been abandoned or involved in an accident in any public roadway without first notifying the borough police department.

i. The police department shall not call a towing company to remove a vehicle from private property. The police department shall provide the property owner with all available information regarding the ownership of the motor vehicle on their property, and the property owner will then be responsible for making their own arrangements to remove the vehicle.

j. The towing company shall notify the police department of all vehicles found by the towing company to have been abandoned and not claimed within 14 days after being stored. The police department shall, upon notification, expeditiously process the vehicle in accordance with the New Jersey Motor Vehicle Code concerning abandoned and unclaimed motor vehicles.

k. The Director of Public Safety may promulgate an application and minimal requirements for vehicular towing, which requirements shall not be inconsistent with this chapter and which shall be enforced pursuant to the procedures set forth in this chapter.

8. TOWING LIST: ROTATION.

a. A towing list will be kept with the director of public safety. The towing list shall include all towing companies which have registered with the borough. A towing company shall be placed on the bottom of the towing list upon registration with the borough. The towing list shall be a rotating list as provided for in paragraphs b, c and d.

b. When the need arises, the police department will call the towing company on the top of the list. The towing company called, if it shall perform any of the services covered by this chapter, shall be placed on the bottom of the towing list and not called again until all other towing companies on the towing list have been called.

c. If a towing company is unavailable to perform required services when called by the police department, for whatever reason, said towing company shall be charged with a call and placed on the bottom of the towing list, and the next available towing company shall be called. The towing company that responds in its place shall remain at the top of the list.

d. If a towing company, after being dispatched, is recalled and does not perform any duties or services covered by this chapter, the towing company shall remain on the top of the towing list. However, if a towing company arrives at the scene of an incident in which its services are required and cannot perform said services, it shall lose its place on the towing list, and the next towing company on the list shall be called.

9. STORAGE FACILITIES.

- a. All storage facilities operated or used by towing companies shall meet requirements of the commission of insurance set forth in N.J.A.C. 11:3-38.1 et seq., as well as all local zoning and code requirements, and must be located within five miles of the geographic center of Pennington Borough or within Pennington Borough, Hopewell Township or Hopewell Borough.
- b. All towing companies shall have an indoor storage facility at its disposal for motor vehicles which have been involved in criminal activity and impounded by the police department.
- c. All storage facilities shall have a business office open to the public between 8:00 A.M. and 4:00 P.M. at least five days a week, excluding holidays.
- d. All towing companies shall have secure storage facilities.
- e. A towing company that engages in private property towing or other non-consensual towing shall provide or arrange for after-hours release of stored motor vehicles.
- f. A towing company that does not release a stored motor vehicle to its owner, or other person authorized to take the motor vehicle, during normal business hours when requested, as required by c. above, shall not charge a fee for after-hours release of the stored motor vehicle.

10. RECORDKEEPING.

- a. All towing companies shall keep accurate records of all motor vehicles towed and stored at the direction of the borough police department. A copy of such records shall be provided to the borough upon request.
- b. A towing company that performs private property or other non-consensual towing shall retain, for three years, the following records:
 1. Invoices for both consensual towing and non-consensual towing services;
 2. Job orders;
 3. Documentation of waiting time;
 4. Logs, which shall include the time when a towed motor vehicle was delivered to the towing company's storage facility from a private property or other non-consensual tow and the date and purpose of each trip to the motor vehicle in storage;
 5. Documents relating to private property and other non-consensual towing services performed and rates charged for services; and
 6. Any contracts under which the private property towing company is authorized to perform private property towing services.
- c. A towing company that engages in private property towing or other non-consensual towing shall make records retained pursuant to b. above available for review by the police department upon request.

11. TOWING AND VEHICLE EQUIPMENT SPECIFICATIONS.

- a. All towing companies engaged in light-duty towing shall have at least one rollback truck and one wrecker, with necessary brooms and equipment to do the complete removal. Each truck must have a manufacturer's capacity of at least 10,000 pounds, gross vehicle weight and a manufacturer's boom capacity of four tons. Proof of capacity must be supplied to the police department at the time of registration.
- b. All towing companies engaged in heavy-duty towing shall have one heavy-duty wrecker with a manufacturer's capacity of not less than 33,000 pounds gross vehicle weight and a boom capacity of not less than 12 tons independently or 24 tons jointly; air brakes so constructed as to lock rear wheels; heavy-duty underreach.
- c. All towing companies engaged in heavy-duty recovery shall have two heavy-duty wreckers with manufacturer's capacity of not less than 33,000 pounds gross vehicle weight and boom

capacity of not less than 12 tons independently or 24 tons jointly; two power winches with pulling capacity of not less than 12 tons each; at least 200 feet of cable at least nine-sixteenths of an inch diameter on each drum; double boom to permit splitting, or single boom hydraulically elevated and extendible with a 360 degree swivel on the end of the boom; air brakes so constructed as to lock rear wheels; heavy-duty underreach; two snatch blocks with a 12 ton rating and two scotch blocks.

d. All towing vehicles must have radio equipment with a 24-hour dispatch service or a cellular telephone for the purpose of maintaining communications with the police department radio desk.

e. All towing vehicles must be equipped with at least one five pound ABC-type fire extinguisher, safety chains, substances for application to small liquid spills, and stiff push brooms to clean up debris at scene.

f. Proof of towing vehicle and equipment specifications shall be provided to the borough with the registration application.

g. All towing vehicles are to conform with all applicable State and Federal laws and shall be subject to inspection by borough officials during normal business hours at the time of registration and on an annual basis thereafter.

12. RIGHTS OF OWNERS/OPERATORS OF MOTOR VEHICLES REQUIRED TO BE TOWED.

a. If a motor vehicle operator or owner wishes to have his vehicle towed by a particular towing company, their request shall be honored, providing the police officer in charge at the scene has not already dispatched a towing company or the police officer has determined that the motor vehicle in question will not be removed in an expeditious or safe manner and will jeopardize the public safety, in which case the motor vehicle operator or owner shall be required to utilize a compensated dispatched towing company..

b. The owner or operator of any motor vehicle required to be towed or stored shall have the right to remove all personal items and effects from the motor vehicle unless the police department has placed a police hold on any such items.

c. The motor vehicle owner or his representative shall have the right to take photographs of any stored vehicles for insurance purposes.

d. Upon request of the motor vehicle owner or his representative, a towing company shall provide a detailed and itemized bill for all services rendered.

13. COLLECTION OF FEES.

All towing companies shall be responsible for collection of all fees for services rendered.

14. COMPLAINTS; VIOLATIONS; HEARINGS.

a. All violations of this chapter and all complaints by the public or police departments against any towing company shall be forwarded to the borough administrator.

b. The borough administrator shall determine if any complaint or violation against a towing company is of such a serious nature as to warrant a hearing and possible disciplinary measures. If the borough administrator decides that a hearing is required, he shall upon proper notice to all interested parties, conduct a hearing in which all parties may present evidence. If, after a hearing, the borough administrator finds that a towing company has violated any provision of this ordinance, the administrator may, depending on the seriousness of the offense:

1. Fine the violating party not more than one thousand (\$1,000.00) dollars;

2. Suspend the violating party from the towing list for not more than three months for a first offense; not more than six months for a second offense; not more than one year for a third offense.

3. Permanently remove the violating party from the list for any violation after its third offense.

c. The violating party shall have the right to appeal a decision of the borough administrator to the Pennington Borough Council or its designee.

d. In addition to the procedures and penalties set forth in this section, a violation of any of the rules set forth in this ordinance shall be considered an unlawful practice to the extent so provided under P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.).

Introduced: October 7, 2013

Advertised: October 17, 2013

Public Hearing: November 4, 2013

Adopted: November 4, 2013

Published: November 14, 2013

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor

Fee Schedule

Light Duty Towing

Basic fee	\$120.00
Night/weekend basic fee	\$120.00
Storage outside	\$35.00
Secure storage	\$35.00
Road service day	\$70.00
Road service night	\$70.00
Spill cleanup per 40 bag of absorbent	\$35.00
After hours pick up of vehicle	\$85.00
Rollback – additional fee	\$20.00
Winching fee per hour	\$100.00
Standby fee per hour	\$80.00
Brush cleanup	\$40.00
Tarp/wrap	\$40.00
Transmission disconnect	\$40.00
Extra man	\$70.00
Decoupling	\$60.00
Administrative fee, more than 3 trips, per	\$15.00

Heavy Duty Towing / Heavy Duty Recovery

Basic tow fees

7,000-14,500 lbs.	\$225.00
14,501-29,999 lbs.	\$300.00
30,000-49,999 lbs.	\$400.00
50,000-80,000 lbs.	\$500.00

Additional services

Disconnect drive shaft	\$50.00	
Connect airlines	\$80.00	
Caging brakes, per axle	\$40.00	Additional fee for pins if left \$10 per
Use of brake assist unit	\$90.00	

Winching/recovery

includes all services necessary to clean up scene, and remove damaged unit, such as secure loose parts, load and transport parts or cargo, etc.

70,000-29,999 lbs.	\$300.00	Hour, charged in 1/2 hour increments
30,000-80,000 lbs.	\$600.00	Hour, charged in 1/2 hour increments