

Chapter 8

AUTOMOTIVE DEALERS AND AUTO WRECKERS

Sec. 8-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Police chief means the chief of police of the city or his designee.

ARTICLE III. AUTO WRECKERS AND STORAGE YARDS

DIVISION 2. AUTO WRECKERS

Subdivision A. Operational Rules and Regulations and Tow Agreements

Sec. 8-111. State and local registration, minimum requirements.

(a) Auto wreckers shall be registered as tow trucks under applicable provisions of state and local law, including, without limitation, Chapter 2308 of the Texas Occupations Code and this chapter.

(b) Any tow truck that performs a nonconsent tow on private property in the city must be registered with the police department, regardless of whether the owner of the tow truck has a place of business in the city. A registrant may apply to the police department for registration of a tow truck by i) submitting a completed application on a form promulgated by the police chief; ii) paying the fee stated for this provision in the city fee schedule per tow truck to the police department; iii) providing verification that the tow truck is equipped to tow light-duty or heavy-duty motor vehicles according to the manufacturer's guidelines; and (iv) providing proof of insurance that meets the requirements of section 86.400 of title 16 of the Texas Administrative Code.

(c) Upon receipt of an application, the police department will inspect the tow truck to determine compliance with the requirements of this section and, if found in compliance, shall issue proof of registration to the applicant.

(d) As a condition of registration and maintaining registration in good standing, the registrant must meet the signage, safety equipment and safety clothing and identification requirements of sections 86.701, 86.1000 and 86.1001 of title 16 of the Texas Administrative Code, and must carry and openly display the appropriate city proof of registration on the registrant's tow trucks.

(e) Each auto wrecker shall meet the following minimum requirements for registration and maintaining registration:-

- (1) Except for heavy duty wreckers, the auto wrecker's chassis cab shall be rated at no less than one ton by the manufacturer and will be equipped by the manufacturer with dual wheels and tires at each end of the rear axle;
- (2) The auto wrecker shall have a mounted light bar that conforms to the requirements of Chapter 547 of the Texas Transportation Code;
- (3) The auto wrecker shall be equipped with wheel dollies, except on heavy duty wreckers and rollback type trucks;
- (4) The auto wrecker shall carry at all times:
 - a. Three flares, each of which shall be capable of being seen at a distance of not less than 600 feet under normal conditions at nighttime;
 - b. A push broom with a handle of not less than 36 inches and a head of not less than 18 inches;
 - c. No less than five gallons of dry sand or other absorbent that is at least as effective as sand in absorbing liquid;
 - d. A container to carry glass and debris cleaned from the roadway when picking up a wrecked vehicle;
 - e. A shovel with a flat edge of not less than nine inches and a handle of not less than 36 inches;
 - f. A wrecking bar of not less than 36 inches in length, with a wedge-shaped head;
 - g. At least one 10 pound fire extinguisher or two 5 pound multiple purpose fire extinguishers, in good working condition;
 - h. Tow lights with appropriate cable (unless wireless), and cushions to protect a vehicle's finish, and;
 - i. Safety (mud) flaps no more than 8 inches from the surface of the road.

(f) Operators shall comply with and shall require auto wrecker drivers to comply with the following clothing requirements:

- (1) A Class 3, Level 2 reflective vest, shirt, or jacket meeting the ANSI/ISEA requirements for high visibility safety apparel must be worn at all times while working outside of the tow truck;
- (2) Closed toe shoes; and
- (3) A vest or shirt displaying, on the front of the shirt or vest, the name of the wrecker company as it is registered with the city.

(g)(e) The registration for each tow truck registered under this section shall be annually renewed by payment of the fee stated for this provision in the city fee schedule per tow truck to the police department, which shall verify that the tow truck is still in compliance with this section.

Sec. 8-112. State licensing of wrecker drivers.

Auto wreckers shall be operated by persons who hold the type of state driver license that is required for their auto wrecker, as applicable.

Sec. 8-131. License required, qualifications.

(a) It shall be unlawful for any ~~wrecker driver~~ person to perform a nonconsent tow unless he has a current wrecker driver license issued by the city, which license shall be prominently displayed on his person during any nonconsent tow.

(b) It shall be unlawful for any person to allow, permit or cause another to drive or operate any auto wrecker for the purpose of performing a nonconsent tow unless the wrecker driver has a current wrecker driver license issued by the city.

(c) To qualify for a wrecker driver's license, an applicant must:

- (1) Be at least 18 years old;
- (2) Hold a valid driver's license and towing operator's license issued by the state;
- (3) Be able to read, write, and communicate orally and effectively in the English language;
- (4) For the initial application, present proof of successful completion of a defensive driving course approved by the Texas Education Agency within the preceding 12 months;

- (5) Not have been convicted of an offense pertaining to wrecker drivers listed in section 1-10 of this Code;
- (6) Not have been involved in more than two motor vehicle accidents within any 12 month period during the preceding 36 months in which the chief of police could reasonably determine from a government-issued crash report that the applicant was at fault;
- (7) Be subject to no outstanding warrants of arrest; and
- (8) Provide evidence that he has passed the drug screening test required by section 8-132(c) of this Code.

Sec. 8-132. Application.

(a) Each person desiring a wrecker driver license shall submit an application to the police chief ~~or his designee~~ on a form furnished by the city. On the application the applicant shall set forth:

- (1) The applicant's full name and residence address ~~of the applicant;~~
- (2) The applicant's date of birth, place of birth, sex, race, and each address where he has resided in the five years immediately preceding his application;
- (3) Whether the applicant has been arrested or jailed for any criminal offense in this state or any other state or country, ~~and if so~~ ~~if he has been arrested or jailed for any such offense,~~ the applicant he shall set out the offense for which he was arrested or jailed, the date of the arrest or confinement, and the place, court and case number of the case;
- (4) The number of ~~his~~ the applicant's driver's license issued by the state and a list of all driver licenses the applicant has held in the three years immediately preceding the submission of the application showing the state that issued each license and the type of license held. The applicant shall also show the police chief ~~or his designee~~ evidence that he has a current driver's license and current towing operator's license issued by the state and shall complete a form allowing the police department to obtain information as to the applicant's driving record from the state and from any state that had issued the applicant a driver license that was valid at any time within the three years immediately preceding the submission of the application.
- (5) Evidence that the applicant has passed a drug screening test administered within the 30 days preceding the date of the application under subsection (c) below.

- (6) Such other information as the police chief ~~or his designee~~ finds relevant.

After the application has been completed, the applicant shall sign the application and shall execute a sworn affidavit, or a declaration pursuant to Texas Civil Practice and Remedies Code sec. 132.001, that all matters stated in the application are true and correct.

The applicant shall also ~~provide the police chief or his designee with evidence that he is at least 18 years of age and~~ submit himself at such times and places designated by the police chief ~~or his designee~~ to be photographed and to be fingerprinted.

(b) Upon initial application for a wrecker driver license and at each renewal, the police chief ~~or his designee~~ shall cause each applicant's criminal history to be researched by the Texas Department of Public Safety. The applicant shall complete any forms required for the police chief ~~or his designee~~ to obtain the report and shall provide funding to the police chief ~~or his designee~~ in a manner specified to cover any fees imposed by any state agency for the report. ~~The This provision of this requirement shall~~ not be construed to preclude the police chief ~~or his designee~~ from obtaining interim criminal history reports at the expense of the city.

(c) Evidence that the applicant has passed the drug screen test administered within the 30 days preceding the date of the application shall be required for original applicants and all renewals. The police chief shall promulgate rules and regulations relating to the drug screening test. The test procedure shall be equivalent to that prescribed by the mayor for pre-employment drug screenings for city employees. The police chief ~~or his designee~~ shall authorize laboratories and facilities that meet nationally recognized standards to obtain samples and perform the tests. The responsibility for obtaining the test and all costs associated therewith shall rest with the applicant.

Sec. 8-133. Application fee.

Any person desiring a wrecker driver license shall pay the non-refundable application fee stated for this provision in the city fee schedule at the time he submits his application for the license.

Sec. 8-134. Issuance; denial; hearing.

(a) The police chief ~~or his designee~~ shall approve an application and issue the wrecker driver license after payment of the application fee and completion of the investigation of the criminal and driving record of the applicant, unless:

- (1) The police chief determines that the applicant is not qualified under section 8-131;

- ~~(4)~~(2) The information provided in the application is materially false or incorrect or the applicant has failed in any material way to comply with this article;
- ~~(2)~~(3) The applicant has had a wrecker driver license revoked during the preceding one year period; or
- ~~(3)~~(4) The applicant is not in compliance with the criminal history provisions of section 1-10 of this Code.

(b) For purposes of this article ~~subchapter~~, the police chief may consider an applicant to have been convicted of an offense when the applicant was charged with an offense listed in section 1-10 of this Code pertaining to wrecker drivers, and

- (1) The applicant entered a plea of guilty or nolo contendere;
- (2) The court deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or a court officer; and
- (3) After the period of supervision, the court dismissed the proceedings and discharged the person.

In the instances set forth in this subsection, the police chief may propose denial of the application upon his determination that the applicant may pose a continued threat to public safety, or employment of the applicant as a wrecker driver would create a situation in which the person has an opportunity to repeat the prohibited conduct. [Sec. 8-134(b) is based on Occupations Code Sec. 53.021(c)]

(c) The police chief shall delay his decision on an application until final adjudication when the applicant is under indictment for or has charges pending for an offense listed in section 1-10 of this Code pertaining to wrecker drivers, and shall promptly inform the applicant of the reason for the delay. Upon receiving notice of the reason for the delay, the applicant shall be entitled to an appeal of the police chief's delay in the same manner as provided in Sections 8-134 and 8-135 of this Code.

(d) In the event that an application is proposed for denial, the police chief ~~or his designee~~ shall promptly inform the applicant in writing of the reasons for the proposed denial and of the applicant's right to a hearing before the automotive board regarding the proposed denial. The notice shall be sent by United States certified mail, return receipt requested, to the applicant's address set out in the application.

~~(c)~~(e) The applicant may perfect his appeal of the proposed denial by a letter addressed to the chairman of the automotive board and delivered to the chairman of the automotive board within 15 days after the date that notice of the proposed denial of the application is placed in the United States mail. The letter of appeal must state that an

appeal from the decision of the police chief or his designee is desired. The appeal process shall be conducted in accordance with rules promulgated by the automotive board for that purpose. If the proposed denial is based in whole or in part upon section 1-10 of this Code, then the notice and hearing procedures shall also include any requirements to comply with section 1-9 of this Code and applicable state laws. The determination of the automotive board with respect to the application shall be final, unless otherwise provided by law.

Sec. 8-135. Standards for review.

(a) An applicant whose application for a wrecker driver license has been proposed for denial pursuant to item ~~(3)~~ (4) of subsection (a) of section 8-134 of this Code may qualify for a wrecker driver license only if the automotive board determines that the applicant is presently fit to engage in the occupation of a wrecker driver. The standards for review that the automotive board shall use in determining the applicant's fitness shall be:

- (1) The extent and nature of the applicant's past criminal activity;
- (2) The age of the applicant at the time of the commission of the crime;
- (3) The amount of time that has elapsed since the applicant's last criminal activity;
- (4) The conduct and work activity of the applicant prior to and following the criminal activity;
- (5) Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) Other evidence of the applicant's fitness, including letters of recommendation from:
 - a. Prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant;
 - b. The sheriff and police chief of ~~police~~ in the community where the applicant resides; and
 - c. Any other person in contact with the applicant.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the automotive board the recommendations of the prosecution, law enforcement, and correctional authorities as required by item (6) of subsection (a) of this section.

(c) In addition to fulfilling the requirements of subsection (b) of this section, the applicant shall furnish proof in the form required by the automotive board that the applicant has:

- (1) Maintained a record of steady employment;
- (2) Supported the applicant's dependents;
- (3) Maintained a record of good conduct; and
- (4) Paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
[This is based on Occupations Code Sec. 53.023(c).]

(d) Following the opportunity for the applicant to be heard, the automotive board may approve the license, deny the license, or condition the approval of the license on such terms and conditions as the automotive board deems appropriate, based on the evidence received at the hearing and consistent with the standards of review contained in this section.

Sec. 8-136. Term; renewal; replacement of lost or destroyed license.

(a) Each wrecker driver license shall expire each year on the anniversary of the wrecker driver license holder's date of birth. The first license hereunder shall expire on the anniversary of the wrecker driver license holder's date of birth next following the expiration of one year from issuance. A permit may be renewed by filing an application pursuant to section 8-132 of this Code at least 30 days prior to the expiration of the permit and paying the application fee pursuant to section 8-133 of this Code. A renewal permit application shall be reviewed and approved pursuant to section 8-134 of this Code.

No license shall be renewed more than 30 days after the date of its expiration. If a license had expired and not been renewed within 30 days, the applicant may apply for a new license as an initial applicant. The fee for such a new license shall be the fee set out for an original license.

(b) A lost or destroyed wrecker driver license may be replaced upon the holder's compliance with the following conditions:

- (1) The filing of a sworn affidavit with the police chief of police stating that the license has been lost or stolen and setting out the details of how the license was lost or stolen, or if such facts are not known, setting out the details of where and when the license holder last saw the license and when its loss was discovered;

- (2) Appearing at the police department for a replacement photograph and fingerprinting; and
- (3) Paying the license replacement fee stated for this provision in the city fee schedule.

A replacement wrecker driver license shall expire on the date of expiration for the license that was lost or stolen.

Sec. 8-137. Revocation, suspension, and refusal to renew.

(a) The police chief ~~or his designee~~ may suspend, or revoke a wrecker driver license ~~for~~ if:

- (1) Any information supplied in the license application was materially false or incorrect;
- (2) The wrecker driver license was issued through error;
- (3) The licensee has failed to comply with any applicable provision of the license or this chapter;
- (4) The licensee has been convicted of violating ~~violation of~~ state laws or of city ordinances; or
- (5) The licensee is under indictment for or has a charge pending for an offense listed in section 1-10 of this Code pertaining to wrecker drivers.

~~Suspensions or revocations may also be based upon other grounds related to issuance, such as if the wrecker driver license was erroneously issued on the basis of incomplete or false information.~~

(b) A wrecker driver's license is automatically revoked if his state-issued driver's license or state-issued towing operator's license is suspended or revoked. A wrecker driver shall notify the police chief's designee within three days of a suspension or revocation of his driver's license or incident management towing operator's license and shall immediately surrender his city wrecker driver's license to the police chief's designee.

~~(b)-(c)~~ A revoked wrecker driver license may not be renewed and shall not be subject to reissuance for a one year period as provided in section 8-134 of this Code. A suspended wrecker driver license may not be renewed until the period of suspension has expired.

~~(e)-(d)~~ An individual whose wrecker driver license is revoked or suspended under this subsection is entitled to an appeal in the same manner as provided in

sections 8-134 and 8-135 of this Code upon receipt of written notice of the revocation or suspension of his wrecker driver license.

Sec. 1-9. Procedures for denial, suspension or revocation of licenses and permits--Generally.

No permit or license authorizing a person to engage in a trade, occupation, vocation, profession or business, shall be denied, suspended or revoked on the grounds that the applicant, permittee, or licensee has been convicted of a criminal offense except under the following procedures:

- (a) An applicant for a license or permit or for the renewal of a license or permit shall be given written notice informing him of the following matters:
- (1) That the city has information that the applicant has been convicted of certain offenses, and a list of the specific offenses for which the city has such information.
 - (2) That the application cannot be considered unless the applicant provides the city with evidence concerning each of the matters set out in ~~section 4(c) of article 6252-13c of the Texas Revised Civil Statutes~~ Chapter 53 of the Texas Occupations Code within 30 days of the date of the notice. The applicant shall be informed that such evidence shall be in the form of sworn affidavits or declarations under penalty of perjury which must state that the affiant or declarant has personal knowledge of the facts set forth in the affidavit or declaration and state the basis of that personal knowledge, except where ~~article 6252-13c~~ Chapter 53 of the Texas Occupations Code specifies that certain letters of recommendation shall be considered. If the applicant does not provide the city with the information required in the notice within 30 days of the date of the notice, the application shall be rejected for failure to complete the application process; provided, however, applicants for taxicab permits shall provide the director of the department of administration and regulatory affairs ~~public service~~ with the information required in the notice at least ten days prior to the date on which the hearing is to be held on the request for the permit.

If the applicant provides the city with evidence as specified above, the applicant shall be given notice that a hearing will be held on his application. Such notice shall specify the date, time and place that the hearing will be held.

- (b) If the city desires to revoke or suspend a permit or license on the grounds that the permittee or licensee has been convicted of a criminal offense, the city shall give the applicant written notice informing him of the following matters:

- (1) That the city is seeking to revoke or suspend his license or permit on the grounds of a criminal conviction or convictions.
 - (2) The specific conviction or convictions upon which the city intends to rely in seeking revocation or suspension of the permit or license.
 - (3) That a hearing will be held on the city's request for revocation or suspension of the permit or license and the date, time and place of the hearing.
 - (4) That he may appear at the hearing, give testimony and examine witnesses.
 - (5) That the licensee or permittee shall have the burden to present evidence concerning each of the matters set out in Chapter 53 of the Texas Occupations Code ~~section 4(c) of article 6252-13c.~~
- (c) All hearings held in connection with the denial of an application or revocation or suspension of a permit or license to engage in a trade, occupation, profession, vocation or business, shall be conducted by the director of the department which issues such permits or licenses, or a person designated by the director to conduct such hearings; provided, however, all hearings on licenses or permits issued by any board whose members are appointed by the mayor shall be conducted by the board which issues the license or permit.

All such hearings shall be conducted under rules consistent with the nature of the proceedings.

If the hearing is on an application for an initial license or permit or an application to renew a license or permit, and the applicant fails to appear at the hearing, the application shall be rejected and the permit or license denied on the basis of the applicant's failure to appear.

If the hearing is on a request by the city to revoke or suspend a permit or license on the grounds that the licensee or permittee has been convicted of a criminal offense and the applicant does not appear, the city shall introduce sufficient evidence to establish a prima facie case showing grounds for revocation.

If the hearing official finds that the applicant, permittee or licensee was convicted of an offense that is grounds for denial, revocation or suspension of the license or permit under the ordinances of the city, the hearing official shall deny, revoke or suspend the license or permit unless he finds that the license or permit should be granted pursuant to Chapter 53 of the Texas Occupations Code ~~article 6252-13c of the Texas Civil Statutes Annotated.~~

The hearing official shall give written notice to the applicant, licensee or permittee of his findings as to whether the license or permit should or should not be denied, revoked or suspended, and the reasons therefor.

If the hearing official finds that the permit or license should be denied, revoked or suspended on the basis of one or more criminal convictions, he shall also inform the applicant, permittee or licensee of his right to file an action in the district court in Harris County for review of the evidence presented to the licensing authority and its decision within 30 days after the date the decision was rendered by the hearing official. The manner of review for such decision shall be under the substantial evidence rule.

- (d) There shall be no appeal to city council from the decision of a hearing official on the denial, revocation or suspension of a permit or license on the grounds of a criminal conviction.
- (e) All notices required under this section shall be given by hand delivery or sent by certified mail, return receipt requested, to the applicant, licensee or permittee at the address set out in his application; provided, however, that the notice required in subsection 1-9(a) may be served by regular first class mail.
- (f) Proceedings relating to licenses and permits issued under article III of chapter 8 of this Code shall additionally be governed by the procedures established therein. To the extent of any conflict, the provisions of chapter 8 shall control over this section.

Sec. 1-10. Same--Specific permits and licenses.

(a) Except as provided in the succeeding sentence applicable to the license enumerated in subsection ~~item~~ (2) of this subsection (wrecker driver license), the licenses and permits enumerated in this subsection shall be denied if the applicant (i) has been convicted of any of the designated offenses within the seven-year period immediately preceding the date of the filing of the application or has spent time in jail or prison during the seven-year period immediately preceding the date of filing of the application for such a conviction, or (ii) is subject to deferred adjudication in connection with any of the above offenses. As to the wrecker driver license listed in subsection (2) of this section, the seven-year limitation shall not apply to any felony conviction for any sexual offense or offense involving violence, including, but not limited to, murder. Additionally, the following licenses and permits shall be subject to denial, revocation, or refusal for renewal, as applicable, if the licensee or permittee has been convicted of any of the designated offenses since the application was filed. Provided, however, no such license or permit shall be denied, revoked, or refused for renewal if the conviction was set aside as invalid or if it is found that the license or permit should not be denied, revoked or refused for renewal under chapter 53 of the Texas Occupations Code:

- (1) All licenses issued pursuant to article II of chapter 8 of this Code:

- a. Any violation of the ordinances or statutes regulating the sale, trade, servicing, storage, handling, dismantling, or destruction of any motor vehicle or motor vehicle parts, accessories, or supplies.
- b. Any violation of the ordinances or statutes regulating the business of selling, trading, storing, dismantling or destruction of motor vehicles or motor vehicle parts, accessories, or supplies.
- c. Any offense involving fraud or misrepresentation.
- d. Any offense involving theft, robbery, or burglary.
- e. Any offense involving bribery or perjury.
- f. Any offense involving violence to any person except for conduct that is classified as no greater than a Class C misdemeanor under the laws of Texas.
- g. Any felony conviction for any violation of any state or federal laws regulating firearms.

The above listed offenses shall be grounds for denial, revocation, or refusal for renewal of the licenses issued pursuant to article II of chapter 8 as all licenses issued under that article allow persons to engage in businesses connected with the sale, trade, servicing, storage, handling, dismantling, or destruction of motor vehicles or motor vehicle parts, accessories or supplies and city council finds that persons engaged in such businesses have special opportunities to engage in the offenses listed above due to the nature of the businesses and the lack of relevant technical knowledge on the part of many of those persons who deal with such businesses.

- (2) Wrecker driver licenses issued pursuant to subdivision B of division 2 of article III of chapter 8 of this Code:
 - a. Any violation of the ordinances or statutes regulating the sale, trade, servicing, storage, towing, handling, dismantling, or destruction of any motor vehicle or motor vehicle parts, accessories, or supplies.
 - b. Any offense involving fraud or misrepresentation.
 - c. Any offense involving robbery, or misdemeanor or felony theft, ~~robbery~~, or burglary.

- d. Any offense involving bribery or perjury.
- e. Any offense involving violence to any person except for conduct that is classified as no greater than a Class C misdemeanor under the laws of Texas.
- f. Any felony conviction for any violation of any state or federal laws regulating firearms.
- g. Any offense involving forgery.
- h. Any offense involving the theft or unauthorized use of a motor vehicle, or burglary of a motor vehicle.
- i. Any offense involving prostitution or the promotion of prostitution.
- j. Any offense involving rape, sexual abuse, sexual assault, enticing of a child, rape of a child, sexual abuse of a child or indecency with a child.
- k. Any offense involving misdemeanor or the felony possession or delivery of drugs.
- l. Four or more moving violations of the traffic laws of this state or any other state, each of which arises from a separate incident, occurring within any 12 month period during the three years immediately preceding the application for a license or of the notice of a hearing for revocation of a license.
- m. Any offense involving driving a motor vehicle while intoxicated, whether under the influence of alcohol or drugs, or both.

The above listed offenses shall be grounds for denial, revocation, or refusal for renewal of a wrecker driver license issued pursuant to subdivision B of division 2 of article III of chapter 8 as that license allows persons to engage in an occupation in which there is a high degree of danger to the public through the involuntary towing and storage of automobiles, and city council finds that such activities involve substantial contact with the public including contact with persons whose vehicles may have become disabled at all hours of day and night and in remote locations. This occupation also affords special opportunities for theft and fraud. Therefore, there is a serious need to protect the public from the types of criminal conduct represented by such offenses.

Provided, however, no such license or permit shall be denied, revoked or refused for renewal if any conviction was set aside as invalid or if it is

found that the license should not be revoked, denied or refused for renewal under chapter 53 of the Texas Occupations Code.

Additional provisions relating to the revocation, suspension, and refusal to renew wrecker driver licenses are established in article III of chapter 8 of this Code. The applicable provisions of chapter 8 are cumulative of the provisions of this section and shall also constitute grounds for the revocation, suspension or refusal to renew a wrecker driver license.

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