



HARRIS COUNTY, TEXAS

**Office of Budget Management
1310 Prairie, Suite 530
Houston, TX 77002
Tel. (713) 755-3306
Fax (713) 437-8445**

June 1, 2011

To: County Judge Emmett and
Commissioners Lee, Morman,
Radack and Eversole

Fm: Kevin Seat

Re: Recommendations that the Court approve an Order to adjust Fee for Nonconsent Tows in the Unincorporated Area of Harris County.

On December 4, 2007 the Court approved an Order Regulating Fee for Nonconsent Tows in the Unincorporated Area of Harris County and Establishing Procedures for Request of Tow Study in Regard to Such Rates. The approved Order Regulating Fee included a provision directing the County's Office of Budget Management (OBM), at such times that the City of Houston (City) subsequently revised its tow rates, to review the new information used by the City of Houston and present an analysis of such information for a determination by the court whether the information justifies modifying the rates applicable to the unincorporated area of the county.

This court last modified the rates on May 20, 2008.

The City revised its nonconsent tow rates effective January 1, 2010 to reflect a decrease in the costs as represented by a weighted blend of certain Consumer Price Indices (CPI). The County did not make a similar adjustment to its rates in 2010.

The City has now revised its non-consent tow rates effective January 1, 2011, to reflect a 3.98% increase in the CPI for the period of October, 2009 to October, 2010, to be:

Regular Tows: \$145.50
Heavy Duty Tows: \$221.00 per hour, 2-hour minimum

In the opinion of OBM, the adjustments implemented by the City are justified, and OBM recommends modifying the County's rates, as applicable to a nonconsent tow made at the request of a peace officer to match those set by the City of Houston.

Separate from these peace officer-requested tows, effective September 1, 2010, several changes were made to the Texas Occupations Code which affect the authority of political subdivisions to regulate fees for Private Property tows, defined by Texas Occupations Code §2308.002 as "any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle". For Harris County, the primary impact of these changes is that the Texas Department of Licensing and Regulation (TDLR) sets maximum rates for these Private Property Tows. It should be noted that the TDLR has not restricted the rates that may be charged for other nonconsent tows.

The City has two rates for nonconsent tows: one for tows requiring a "Heavy Duty Wrecker", defined by the City Code as a wrecker having chassis rated at five tons or greater by the vehicle manufacturer and a winch capable of lifting a minimum of 30,000 pounds as rated by the winch manufacturer and another rate for all other tows. The

City rate for Heavy Duty Tows also provides for a minimum two-hour charge. The City does not make a distinction between peace officer-requested tows and Private Property tows.

In contrast, the maximum rates for Private Property Tows as set by the TDLR have three categories of rates rather than two: one for "light duty tows," another for "medium duty tows" and another for "heavy duty tows", as defined by the TDLR rules. There is no two hour minimum for any of the rates. The TDLR rates also authorize and set maximum drop fees for each type of tow, which are one-half of the rate for a tow. The TDLR rates further differ from the city rates in that the types of tows are defined on the basis of the gross weights of the vehicles being towed rather than upon the size of the wrecker.

OBM recommends in regard to Private Property Tows, that the county's rates be modified to reflect the categories used by the TDLR in setting the maximum rates for Private Property Tows and that the rates include drop charges in an amount equal to one-half of the applicable tow charges rounded off to the nearest fifty cents. Doing so will make the County Private Property Tow rates and the TDLR maximum Private Property tow rates comparable and make it clear that the County Private Property Tow maximum rates are lower than the TDLR maximums.

In accordance with the above noted regulations, OBM recommends modifying the County's private property tow rates (and drop charges) as follows:

- (1) light duty tows--\$145.50 (drop charge \$73.00);
- (2) medium duty tows--\$294.00 (drop charge \$147.00); and
- (3) heavy duty tows--\$442.00 per unit or a maximum of \$884.00 (drop charge \$221.00).

Accordingly, OBM recommends that the court consider approving the attached Order modifying the rates, to be effective June 15, 2011.

did not make a similar adjustment to its rates in 2010. The City of Houston, effective January 1, 2011, has increased its maximum tow rates to reflect the 3.98% increase in the Consumer Price Index (CPI) for the period of October, 2009 to October, 2010.

6. In accordance with the Order of December 4, 2007, OBM has analyzed the information used by the City in computing its rate adjustment and other information available to it. In the opinion of OBM, the adjustments implemented by the City are justified, and OBM recommends modifying the County's rates, as applicable to a nonconsent tow made at the request of a peace officer to match those set by the City of Houston, but OBM recommends in regard to Private Property Tows, defined by Texas Occupations Code §2308.002 as "any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle," that those rates should be modified to reflect the categories used by the TDLR in setting the maximum rates for Private Property Tows and the rates include drop charges in an amount equal to one-half of the applicable tow charges rounded off to the nearest fifty cents.

NOW THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS, THAT:

Section 1. The recitals set forth in this order are true and correct.

Section 2. IT IS ORDERED that the rate for a nonconsent tow, as that term is defined by Texas Occupations Code §2308.002, of a vehicle originating in the unincorporated area of Harris County, shall, when such non-consent tow is made at the request of a peace officer but not when such non-consent tow is a Private Property Tow as defined by Texas Occupations Code § 2308.002, be \$145.50 regardless of time used to tow a vehicle, provided that the tow is not subject to the tow rate provided for in Section 3 of this order.

Section 3. IT IS FURTHER ORDERED that the rate for a nonconsent tow, as that term is defined by Texas Occupations Code §2308.002, originating in the unincorporated area of Harris County, , when such non-consent tow is made at the request of a peace officer but not when such non-consent tow is a Private Property Tow as defined by Texas Occupations Code § 2308.002, shall be \$442.00 for up to two hours of such tow, plus \$221.00 for each additional hour or part thereof, if such tow requires and is performed by a tow truck having a chassis rated as 5 tons or greater by the vehicle manufacturer and a winch capable of lifting a minimum of 30,000 pounds as rated by the winch manufacturer.

Section 4. IT IS FURTHER ORDERED, that the following requirement apply in regard to Private Property Tows, as defined by Texas Occupations Code § 2308.002, when such Private Property Tows originate in the unincorporated area of Harris County

(a) For purposes of this section:

- (1) light-duty means the tows of motor vehicles with a gross weight rating of 10,000 pounds or less;
- (2) medium-duty means the tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and
- (3) heavy-duty means the tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds; and
- (4) drop charge means the maximum that may be charged for the release of the vehicle before its removal from the property or parked location.

(b) The maximum amount that may be charged for private property tows is as follows:

- (1) light duty tows--\$145.50;
- (2) medium duty tows--\$294.00; and
- (3) heavy duty tows--\$442.00 per unit or a maximum of \$884.00.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged for a drop charge (if the motor vehicle is hooked up) is:

- (1) light duty tows--\$73;
- (2) medium duty tows--\$147.00; and
- (3) heavy duty tows--\$221.00.

- (d) If an owner, authorized operator, or authorized agent of the owner of a motor vehicle is present before the removal from the property or parked location the tow operator shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing drop charge.
- (e) For purposes of this section, a tow company must accept cash, credit cards and debit cards as payment for the drop charge.

Section 5. It is not intended, and no provision of this order should be so construed, to contravene any applicable law or to pre-empt any federal statute. Notwithstanding the use of terminology that might be construed to include matters not within the legal scope of this Order, it is intended that such terms be construed as limited to such legal scope. To the extent that any part or any provision in this Order might otherwise be construed as invalid, illegal, or unenforceable in any respect, it should be construed as being limited in its scope and application to only those circumstances to which it can legally apply. To the extent that any provision or part of this order is still found to be invalid, illegal or unenforceable in any respect, it shall not affect any other provision.

Section 6. IT IS FURTHER ORDERED THAT this order shall be effective June 15, 2011.