

Request for City Council Action

Date: April 28, 2015

Agenda Section: General Business No. 6	Originating Department: Office of the City Manager
Item: Ordinance Amending Title Five of the Carbondale Revised Code as it Relates to Nonconsensual Towing Fees No. 6.1	Approved:

Background:

In 1997, the City Council adopted an ordinance that initiated the City’s regulation of the nonconsensual towing of vehicles within the City limits. Nonconsensual towing is defined as the towing or removal of any vehicle from private property without the consent of the owner or operator of the vehicle. The regulations contained in Title Five (5), Chapter Thirteen (13) of the Carbondale Revised Code do not pertain to the towing of vehicles from the public right of way or from City of Carbondale controlled property. In 2005, the fees were reviewed and increases made as noted in the chart below. Representatives from the towing companies presented information to the City Council on February 10, 2015, outlining the need and justification to increase fees. Staff has contacted other communities within the area as well as other university communities to determine if they regulate the rates for nonconsensual tows. The cities of Anna, Benton, Centralia, DuQuoin, Harrisburg, Herrin, Marion, Mt. Vernon, Murphysboro, and Pinckneyville do not regulate towing fees of any kind. West Frankfort is the only city in the immediate area found to regulate tow fees.

Cape Girardeau (home of Southeast MO University), Macomb (home of Western IL University), Champaign (home of the University of IL) and Charleston (home of Eastern IL University) do not regulate nonconsensual tows but do set maximum fees for all towing activities initiated by the City. Edwardsville (home of Southern IL University - Edwardsville) does not regulate tow fees. Paducah, KY and DeKalb, IL did not respond to the inquiry. Normal (home of Illinois State University) is the only university community that regulates nonconcensual tows.

Comparison Chart

Towing Fees	West Frankfort	Cape Girardeau	Macomb	Charleston	Champaign	Normal
	\$75 7a-5p \$100 5p-7a	\$24.50	\$75 7a-5p \$150 5p-7a and weekends	\$95	\$130 (\$5 increase per year through 2017)	\$85
Use of dolly		29.50			50	25
Use of winch		24.50				
Outside storage after 24 hours	25 per day	14.50		30	40	12
Inside storage after 24 hours					45	
After hours release of vehicle				25		20
Interrupted tow						25

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
-------------------------------	---------------------------	-------------------------	-------------------	-----------------------------

Council Action: Motion by _____ 2nd by _____ to _____

During the March 24 meeting, Council received comments from the public concerning fees, posting of signage, lighting and the after-hours release of vehicles. Following a discussion, staff were directed to review the comments and prepare changes for consideration. Staff reviewed the current non-consensual towing regulations and compared those with the code for the Town of Normal. The comparison revealed that the code for Normal specifically dealt with most of the expressed concerns as well as providing clarity to other areas. As a result staff has re-written most of the chapter regulating nonconsensual towing. Copies of the revised proposal were provided to the City Council on April 3 and to the local tow companies on April 6.

Staff received one additional comment from a towing company indicating the cost to reprint the required signage every two years with updated pricing would not be cost effective and recommended against a two-year tiered price increase. Based on the fee comparison with other communities, the comments and recommendations from Council and the towing companies, it is the City Managers recommendation that fees be increased as indicated below.

Modified Chart for Carbondale

Towing Fees	1997-2004 Rates	2005-2015 Rates	Rates Proposed by Tow Companies	Recommendations by Staff
	\$55	\$65	\$85	\$75
Use of special equipment (dolly, winch)		10	30	30
Outside storage after 24 hours	10	10	25	20
Inside storage after 24 hours	10	10	35	30
After hours release (including weekends)			25	20
Interrupted tow	20	25		25

Recommended Action:

The City Council is requested to approve an Ordinance amending Title Five (5) of the Carbondale Revised Code as it relates to nonconsensual towing and increasing the fees.

CITY OF CARBONDALE, ILLINOIS

ORDINANCE NO. 2015- ____

**AN ORDINANCE AMENDING TITLE FIVE OF THE CARBONDALE REVISED
CODE AS IT RELATES TO NONCONSENSUAL TOWING FEES**

ADOPTED BY THE CITY COUNCIL

OF THE CITY OF CARBONDALE, ILLINOIS

THE 28TH DAY OF APRIL, 2015

**Published in pamphlet form by authority of the City Council of the City of Carbondale,
Jackson County, Illinois, this 29th day of April, 2015.**

CERTIFICATE OF PUBLICATION

**I, Jennifer R. Sorrell, the duly qualified City Clerk of the City of Carbondale,
Illinois, and the official custodian of the records of said City, do hereby certify that this
ordinance was published in pamphlet form by authority of the City Council on the 29th day
of April, 2015.**

Jennifer R. Sorrell, City Clerk

ORDINANCE NO. 2015-____

AN ORDINANCE AMENDING TITLE FIVE OF THE CARBONDALE REVISED CODE AS IT RELATES TO NONCONSENSUAL TOWING FEES

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City Code of the City of Carbondale, Illinois, under Title 5 outlines nonconsensual towing services within the City of Carbondale; and

WHEREAS, services previously established in the Revised Code, have not been amended since their adoption in 2005; and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City of Carbondale to amend the nonconsensual towing services established in Chapter 13 of Title 5 of the Carbondale Revised Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE AS FOLLOWS:

SECTION 1. That Chapter 13 of Title 5 of the Carbondale Revised Code is hereby deleted in its entirety and a new Chapter 13 is hereby added as shown in Exhibit “A” attached hereto and made a part hereof.

SECTION 2. All of the remaining sections of Title 5 of the Carbondale Revised Code shall remain in full force and effect.

SECTION 3. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 4. That repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinances.

SECTION 5. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 6. That the City Council of the City of Carbondale finds that the subject matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

SECTION 7. That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
Donald D. Monty, Acting Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

CHAPTER 13

NONCONSENSUAL TOWING SERVICES

SECTION:

- 5-13-1: Definitions
- 5-13-2: Fees
- 5-13-3: Authorization Required
- 5-13-4: Signs
- 5-13-5: Towing When no Signs are Required
- 5-13-6: Interrupted Tow
- 5-13-7: Notification to Law Enforcement Agencies
- 5-13-8: Storage
- 5-13-9: Release of Motor Vehicles from Custody of Tow Truck Operators
- 5-13-10: Collection of Costs
- 5-13-11: Violation

5-13-1: **DEFINITIONS:** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any words, terms and phrases which are not defined in this section shall have the meanings ascribed to them in the Illinois Compiled Statutes.

NONCONSENSUAL TOWS: Any towing service performed without the prior consent or authorization of the owner or operator of a motor vehicle.

PERSON: Any natural person, partnership, corporation, association, organization, trust, or other entity.

TOW TRUCK: Any truck designed or altered and equipped for and used to push, tow or draw vehicles by means of a crane, hoist, towbar, towline or auxiliary axle, and to render towing services to vehicles.

TOW TRUCK OPERATOR: Any person engaged in the business of, or offering the services of, vehicle towing whereby motor vehicles are or may be towed or otherwise removed from one place to another by use of a tow truck.

VEHICLE: Any device in, upon or by which any person or property is or may be transported or drawn upon a public or private roadway, except devices moved by human power. (Ord. 97-140)

5-13-2: **FEES:** The following schedule of maximum fees, effective upon adoption of this ordinance, shall be in effect for all nonconsensual tows:

<u>Service Description</u>	<u>Price</u>
Towing from tow truck (any vehicle size)	\$75.00
Use of dolly	30.00
Use of winch	30.00
Outside storage (after 24 hours)	20.00
Inside storage (after 24 hours)	30.00
After hours release of vehicle	20.00
Interrupted tow	25.00
Excessive work or waiting	0.00
Service fee	0.00
Mileage (in or outside city limits)	0.00

Any other service provided during the nonconsensual tow shall be at no additional cost to the owner or operator of said vehicle, unless said owner or operator agrees upon the additional fee in advance.

5-13-3: **AUTHORIZATION REQUIRED:** The towing or removal of any vehicle from private property without the consent of the owner or operator of the vehicle is subject to compliance with the following conditions and restrictions, in accordance with 625 ILCS 5/4-201 et seq.:

- A. **Tow Truck and Towed Vehicle Rear Lights:** Any tow truck operating within the city of Carbondale shall have rear lights that comply with all requirements of the state of Illinois. In addition, where a towed unit, behind a towed vehicle or any load thereon partially or totally obscures the rear lamps displaying red lights to the rear of the tow truck, the rearmost towed unit shall be equipped with two (2) portable lamps, temporarily attached to the towed vehicle, displaying red lights visible from a distance of not less than one thousand feet (1,000') to the rear of the such towed unit which are positioned in such a manner as to not obstruct the visibility of the red light as to any vehicle operator approaching from the rear of such vehicle or combination of vehicles, and with appropriate cable, and with cushions to protect the towed vehicle's finish. In addition, all tow trucks operating within the city of Carbondale, shall utilize straps and tie downs as specified by the tow truck manufacturer.
- B. No motor vehicle may be towed by a tow truck operator if it is parked in the space in which it is authorized to park without the vehicle owner's consent.
- C. Before a tow truck operator may remove an unauthorized vehicle from private property, the tow truck operator must first obtain a written request from the property owner, the property owner's authorized agent or the lessee of the private property to remove the specific vehicle in question, unless the tow truck operator has been given written

authorization to remove all unauthorized vehicles from said private property. Any payment of any kind by a tow truck operator to a property owner, lessee or property manager for permission to tow any vehicle is prohibited.

- D. When any owner, authorized agent or lessee of private property gives written authorization to a tow truck operator to remove all unauthorized vehicles from a private parking area, signs shall be posted pursuant to 5-13-4 and the written authorization shall, upon City request, be filed with the City Clerk and Carbondale Police Department. Any payment of any kind by a tow truck operator to a property owner, lessee or property manager for permission to tow any vehicle is prohibited.
- E. When a property owner utilizes a sticker system to indicate who is allowed to park in an area, those stickers must be of a quality such that they readily adhere to window glass, and do not readily fall off. A hang-tag system is permitted in lieu of a sticker system.
- F. Except upon the termination of tenancy, no property owner may terminate parking permission without first informing the permit holder in person or in writing of the termination. The burden of proof of showing termination given to the permit holder shall be on the Tow truck operator and property owner.

5-13-4: **SIGNS:**

- A. Signs required. Before a tow truck operator removes any trespassing or unauthorized vehicles from a private parking area containing more than three spaces, signs must have been posted no less than twenty-four (24) hours prior to the time when any tow is made.
- B. Required sign(s) shall be prominently visible from all entrances to the parking area and in clear view free from interference from any natural or man-made objects and shall be visible at night by the use of reflective lettering or a lighted sign. The portions of these signs informing that unauthorized vehicles will be towed shall be in letters not less than two (2) inches in height, and in a color vividly contrasting to the background color of the sign. Sign(s) shall be posted at each driveway access or curb cut allowing vehicular access to the property within five (5) feet from the public right of way line. If there are no curbs or access barriers, signs must be posted at every one hundred (100) foot interval of lot frontage. In cases where said sign(s) are absent or are not clearly visible, for whatever reason, at the time the vehicle is parked without authorization, towing shall not be permitted. The signs shall contain the following information:
 - 1. A specific statement indicating who is allowed to park in the area. Said statements may use classes of persons as well as individuals, but the statement must provide persons with adequate information to reasonably apprise persons as to who is allowed to park in the area. The statement “Authorized Parking Only – Unauthorized Vehicles Towed” is not sufficient to apprise persons as to who is allowed to park on private property.

2. “Customer Parking Only – All Others Towed” and “Permit Lot – Vehicles Displaying Valid Permits Only – All Others Towed” are examples of signs which apprise persons as to who may park in a given area.
3. A warning that unauthorized vehicles will be towed.
4. The maximum amount of towing charges, if any, charged by the tow truck operator to recover the vehicle.
5. Name and phone number of tow truck operator.

5-13-5: TOWING WHEN NO SIGNS ARE REQUIRED:

- A. Marked parking location. When a vehicle is parked in an otherwise authorized parking spot on private property and no signs are posted, the tow truck operator may not remove the vehicle until after either 1) the vehicle owner has been notified in writing or in person that the vehicle may be towed, or 2) 24 hours have elapsed since a sticker has been placed on the driver’s side window or windshield indicating that the vehicle may be towed.
- B. Parking in unauthorized areas. When a vehicle is parked on private property in a clearly marked no parking area, on a non-hard-surface, across a sidewalk, blocking a driveway or dumpster, or other location where parking is not ordinarily permitted, a tow truck operator may remove the vehicle at the direction of the property owner.
- C. On private property containing three (3) or fewer parking spaces, a tow truck operator may remove an unauthorized vehicle without signs being posted, notification to the vehicle owner, or stickers being placed on the vehicle.

5-13-6: INTERRUPTED TOW: No vehicle may be towed by any person from private property if the owner or other person entitled to possession of the vehicle is present, or arrives at the scene prior to the vehicle’s removal from such private property, exhibits the ignition key of said vehicle, and offers to remove such vehicle voluntarily prior to the time such person attempting to tow actually removes such vehicle from the private property in question, provided that such other person so removes such vehicle immediately. However, the owner must pay an interrupted tow fee per 5-13-2. If the owner refuses to pay the interrupted tow fee, the tow truck operator may proceed to tow the vehicle.

5-13-7: NOTIFICATION TO LAW ENFORCEMENT AGENCIES: Whenever an unauthorized vehicle is towed from private property, the tow truck operator shall notify the Carbondale Police Department not later than one hour after the vehicle is removed. Such notification may be by email, telephone or fax and shall include the name of the tow truck operator; a complete and accurate description of the vehicle, including license plate number; the location from which and to which the vehicle was towed; the time the vehicle was towed; and the reason the vehicle was towed.

5-13-8: **STORAGE:** If an attendant is not on duty at the tow truck operator's principal place of business twenty four (24) hours a day, seven (7) days a week, to return vehicles upon the payment of towing service charges, there shall be a sign prominently displayed containing a telephone number where the owner, manager or attendant of the tow truck service storage area may be reached at any time so that a towed vehicle may be reclaimed by its owner in a minimum amount of time, not to exceed two (2) hours.

5-13-9: **RELEASE OF MOTOR VEHICLES FROM CUSTODY OF TOW TRUCK OPERATORS:**

- A. Prior to release of towed motor vehicles, the tow truck operator shall permit the owner of the vehicle towed, or his authorized agent, to inspect the interior and exterior of said vehicle and its contents.

- B. The owner or authorized agent of the owner of the towed vehicle shall be identified by a valid driver's license and an ignition key which operates the vehicle towed; or in the instance of rented vehicles, identification may be accomplished by presentation of a rental contract and the driver's license of the renting party named in the rental contract.

- C. Should the tow truck operator claim fees and charges for towing, it shall base fees and charges on rates as stated in Section 5-13-2.

- D. The tow truck operator shall accept any of the following methods of payment for such fees and charges:
 - 1. United States currency,
 - 2. Regular recognized traveler's checks,
 - 3. Money Order,
 - 4. Cashiers' or Certified Check,
 - 5. Major credit and debit cards. To the extent that the City of Carbondale is authorized to enact regulations on the use of credit and debit cards, a tow truck operator holding a properly signed credit or debit card receipt shall become a holder in due course, and neither the holder of the credit or debit card nor the company which issued the credit or debit card may thereafter refuse to remit payment in the amount shown on the credit or debit card receipt minus the ordinary charge assessed by the credit or debit card company for processing the charge. No tow truck operator may charge any extra fee for payment by credit or debit card.

- E. The tow truck operator shall immediately release a towed motor vehicle to the owner upon tender of the lawfully authorized fee. Failure of the tow truck operator to release a vehicle within 30 minutes of the fee being tendered shall result in a loss of the fee.

- F. The tow truck operator shall provide a reason for the vehicle being towed.
- G. Hours for Release of Vehicles. A tow truck operator must be open for release of vehicles Monday through Friday, 8:00 a.m. to 6:00 p.m., except for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. A tow truck operator must release vehicles upon demand at all other times upon payment of an after-hours fee per Section 5-13-2, except no after-hours fee may be charged for the release of vehicles within two hours of a vehicle being towed.

5-13-10: **COLLECTION OF COSTS:** Collection of towing charges from the owner or operator of a towed vehicle, pursuant to this chapter, shall be the sole responsibility of the tow truck operator or his representative. The city and the police department will not be responsible for nor assist in the collection of such fees, costs or charges.

5-13-11: **VIOLATION:** Any person, corporation or entity, who shall violate any provision of this chapter shall be subject to a fine not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00). Any such violation shall constitute a separate offense on each consecutive day that it continues.