

NOTICE IS HEREBY GIVEN that Ordinance #20-13 was introduced and passed on first reading at the regular meeting of the Mayor and Council on the 20th day of October, 2020 and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 24th day of November, 2020 at 8:00 p.m. or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Karen Hughes, Borough Clerk
Borough of Westwood

ORDINANCE NO. 20-13

An Ordinance Repealing and Replacing Chapter 358, Towing

Section 1. BE IT ORDAINED that the Mayor and Council of the Borough of Westwood hereby repeal the contents of Chapter 358, Towing, in its entirety and replace it with the following:

Section 2.

§ 358-1 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

AUTOMOBILE

A motor vehicle of a private passenger or station wagon type that is owned or leased and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, or delivery sedan, a van or a parcel truck or a camper-type vehicle used for recreational purposes owned by an individual or individuals who are residents of the same household, not customarily used in the occupation, profession or business of the owner(s).

BASIC TOWING SERVICE

The removal and transportation of an automobile from a highway, street or other public or private road, or a parking area, or from a storage facility, and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm or from being impaled upon any other object within the right-of way or berm. Basic towing only includes providing access to the vehicle during normal business hours. Any additional services, including tow outs, will be negotiated with the party requesting same.

CALENDAR YEAR

The period of time between January 1 and December 31 of any given year.

CLASS I VEHICLE

Detachable trailer capable of hauling vehicles, machinery and/or equipment, commonly referred to as "lowboy."

MOTOR VEHICLE ACCIDENT

An occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility. This includes all situations which are accidental as to the licensed owner or operator of the motor vehicle even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the licensed owner or operator of the motor vehicle.

OFFICIAL TOWER

A person or company licensed by the Borough of Westwood to tow and/or store vehicles.

OUTSIDE SECURED

The automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier that is at least six feet high and is installed with a locked gate. The facility is to be lighted at night.

SPECIAL RECOVERY SERVICES

Constitutes any action that is not normally associated with roadside towing, e.g., winching, righting overturned vehicles, or other services required when a vehicle will not roll on its own wheels.

TOW VEHICLE

Only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under reach equipment specifically designed by its manufacturer for the removal or transport of motor vehicles.

§ 358-2. Licensing and identification of official towers.

A. The governing body of the Borough of Westwood, or its designated agent or officer, may license persons or companies meeting the criteria set forth in this chapter and engaged in the business of or offering the services of motor vehicle towing, wrecking or storage (service), whereby damaged, (or) disabled and/or impounded motor vehicles are towed or otherwise removed from the place where they are damaged, (or) disabled, and/or impounded by use of tow vehicle, as defined herein. Such person(s) or company shall be known as an "official tower."

B. Official towers shall be approved by means of a license, which shall be issued by the Borough as hereinafter provided. Each licensed official tower shall maintain a copy of the license in the current year inside all tow vehicles used within the confines of the Borough of Westwood.

§ 358-3. Exception for owner-requested service.

No license shall be required for the on-site repair and/or towing or storage of any vehicle when the request is received by the towing operator from the owner prior to a police request or if the owner or operator of a vehicle requests a tow company of their choice. All contact for personally requested towing shall be made by the requestor. Based on scene safety, estimated time of arrival, road conditions or any other hazards, the Westwood Police Department shall determine whether or not the requested tow company or the duty tow shall be the towing provider.

§ 358-4. Services to be furnished; possession of special equipment.

A. The official tower shall furnish adequate and proper towing, wrecking, storage and emergency repair service to damaged or disabled motor vehicles within the limits of the Borough when requested to do so by the Chief of Police or his/her designee. The official tower shall be available to render service 24 hours per day, seven days per week and the official place of business must be no further than 2 miles from the Borough boundary lines.

B. No official tower shall subcontract or assign any work that is to be performed by the official tower under the provisions of this chapter.

C. The Police Chief or his/her designee shall maintain a rotating list for a period of 12 months, effective January 1 of each year. Disqualified licensees will be deleted immediately from the list upon disqualification and may requalify for the following twelve-month period, at the discretion of the Chief of Police or his designee. Rotation shall be on a weekly or monthly basis within the discretion of the Chief of Police.

§ 358-5. Application for official tower license.

A. The Borough Clerk shall advertise the availability of towing license applications in the fourth quarter of the current year. Said advertisement shall set the submission deadline for applications which must be strictly adhered to by all applicants.

B. Application for an official tower license shall be submitted to the Borough Clerk on a form provided by the Borough Clerk, as approved by the Chief of Police, and shall contain all of the following information:

- (1) The name, business address, telephone number and federal tax identification number (where applicable). When the official tower is owned and operated by an individual, the name, social security number, residential, business addresses, and telephone number(s) of such individual shall be provided. When the official tower is a corporation or partnership, the application shall contain the names, residences, telephone numbers, date of birth and social security number of all persons owning any interest in the official tower.
- (2) In the event that the official tower is conducting business operating under a trade or business name, the applicant shall submit a certificate of such name as proof that such name has been appropriately filed with the County Clerk's Office of Bergen County and/or with the Secretary of State of the State of New Jersey.
- (3) Any such information as may be required by the Borough Council (or designee) concerning the personnel, vehicles, equipment and storage facilities of such applicant, as hereinafter provided, showing that the applicant meets the maximum standards of performance.
- (4) A certificate or certificates of insurance evidencing adequate insurance coverage as hereinafter provided.
- (5) A fee of \$1,000 shall be paid at the time of submission of the application to cover the administrative expenses incurred by the Borough in processing an application.
- (6) The names and addresses of two business references, not affiliated with the Borough, who have known the applicant for at least two years and who can attest to the applicant's experience and performance in the towing, wrecking and storage business.
 - (a) All towing vehicles must be listed on the application, including the make and model number, year of vehicle and vehicle identification number (VIN) and any and all other information that the Borough Council may deem necessary.
 - (b) No vehicle may be listed on more than one application, nor there does a transfer of vehicles between towers.
- (7) A complete list, including dates of service, of all other municipalities, state agencies and/or governmental entities that the applicant is, or has been, an official tower of or held a towing permit from. No person applying individually shall be eligible for approval or appointment as an official tower of the Borough of Westwood unless that person shall have been an official municipal tower with a minimum of five years' experience in municipal towing in any municipality of the State of New Jersey, including a minimum of two years' experience in municipal towing in any municipality in the County of Bergen, State of New Jersey. No corporation or partnership shall be eligible for approval or appointment as an official tower of the Borough of Westwood unless that business entity shall have been an official municipal tower with a minimum of five years' experience in municipal

towing in any municipality of the State of New Jersey, including a minimum of two years' experience in municipal towing in any municipality in the County of Bergen, State of New Jersey.

(8) A complete list of all actions taken against the applicant by a governmental entity for the applicant's alleged violation of any towing ordinance or regulation while towing as a licensed or permitted tower for that governmental entity. If the applicant's towing license or permit has been revoked, suspended or denied, the applicant shall list each time, what governmental entity was involved and a brief description of the event(s) that led up to the revocation, suspension and/or denial of a towing license or permit.

C. No license shall be granted to a tower unless and until the tower seeking the license has appointed the Borough Clerk as the applicant's true and lawful attorney for the purpose of acknowledging service out of any court of competent jurisdiction to be served against the applicant.

D. Suspension or revocation of a license, and/or the prior denial of an application affecting the applicant, from this municipality or any county or state agency granting such license, may be cause for denial of a license under this chapter.

E. The applicant shall also cause each of its drivers to have a background check and driver's license check performed at a state-approved facility approved by the Westwood Police Department prior to that driver performing any towing services in the Borough. Copies of the results of the background check shall be made available to the Borough Clerk immediately upon receipt.

F. Upon receipt of a completed application, the Chief of Police or his/her designee shall complete his/her review and recommendation. The review by the Chief of Police or his/her designee shall consist of the following: an inspection of the personnel, vehicles, equipment and storage areas proposed to be utilized by the applicant to verify the accuracy of the information contained in the application and to determine compliance with applicable laws and regulations and the standards of performance required by this chapter.

G. An applicant may be included on the official towers list by an official action of the Borough Council by resolution adopted at the annual reorganization meeting or at a regular public meeting when, from a consideration of the application and from such other information as may be obtained, the Borough Council find that all of the following circumstances exist:

- (1) The applicant has not knowingly and with intent to deceive made any false, misleading or fraudulent statements of material fact in the application or in any other document required pursuant to this chapter.
- (2) The applicant has met the standards in this chapter and has furnished the required hold harmless agreement and certificate(s) of insurance.
- (3) The application has been reviewed and the Chief of Police or his/her designee has submitted a favorable report, approving the application of the towing company.
- (4) Neither the applicant nor the applicant's personnel have been convicted of a crime or have had their driver's license suspended within the past year.

H. The Chief of Police or his/her designee shall conduct his or her review and render a report to the Borough Council recommending either the approval or denial of the application within 45 days of receipt of the application. The Borough Council shall take action with regard to the report of the Chief of Police. The applicant or its representative shall be given notice of the date on which Borough Council will

consider the application and shall be permitted to appear and be heard at that time. Applications will be considered at the annual reorganization meeting or at such other meeting designated by the Borough Council.

I. Written notice of the approval or denial of the application shall be provided to the applicant within 10 days of the decision of the Borough Council.

§ 358-6. Issuance of license

A. Upon approval of the application as herein provided, the Borough Clerk shall issue for the applicant an official tower's license for each tow vehicle or flatbed vehicle to be utilized in providing services pursuant to this chapter by submitting such to the Chief of Police or designee for issuance to the official tower(s).

B. Each licensed official tower shall maintain a copy of the license in the current year inside all tow vehicles used within the confines of the Borough of Westwood.

C. Expiration; renewal; revocation.

(1) Each official tower's license shall expire on December 31 of each calendar year, and the license shall run for the calendar year only. The license shall not be transferable or assigned and may be subject to revocation by the Borough Council for any of the following reasons:

- (a) If it is subsequently determined that the applicant knowingly and with intent to deceive made false, misleading or fraudulent statements of material fact in the application or in any other document required pursuant to this chapter.
- (b) Violation of any federal or state law or municipal ordinance or regulation relating to the operation of a motor vehicle or the provision of towing services.
- (c) Violation of any rule or regulation promulgated by the New Jersey Department of Insurance.
- (d) Violation of any of the provisions of this chapter.

(2) No license shall be issued for less than a full calendar year, nor should a license be issued at any other time than the period set forth above.

D. Upon the expiration of an official tower's license, the applicant, prior to performing any service thereafter, shall refile completely for such official tower's license, setting forth all the information required in the form provided by the Borough Clerk and complying with the provisions of this chapter.

§ 358-7. Minimum standards of performance.

To qualify for inclusion on the list of official towers, applicants must meet the following minimum standards:

A designated tow truck company, when filing an application for and at all times while holding a license under this chapter, shall own or lease and have available for use in the performing of the services required by the licensee the following equipment:

1. Light Duty Tow truck with a towing capacity of up to 11 tons.
2. Flatbed tow truck with a towing capacity of up to 11 tons.
3. Medium Duty Tow truck with a towing capacity of 12- 20 Tons.
4. Heavy-Duty Tow Truck with a minimum towing capacity of 25 Tons or greater and with a minimum GVW of 50,000 lbs. and also capable of towing a tractor trailer, bus or loaded garbage truck.

§ 358-9 Tow truck lettering

All tow trucks shall be properly lettered in accordance with local, state and federal law.

§ 358-10 Maintenance

All equipment used by the company in performing its obligations under the license shall be maintained in good and safe condition and may be inspected for condition by the Westwood Police Department at any time, wherever located. Any deficiency in such condition reported by the police to the licensee shall be promptly corrected, and any failure to correct may be cited as a violation by the licensee pursuant to this chapter.

A. Each applicant shall submit, along with its application, proof of ownership or lease of the Vehicles which will be utilized to provide services pursuant to this chapter.

B. Minimum equipment and reporting requirements.

(1) Every tow vehicle or flatbed vehicle shall have two-way radio or cellular phone capability with a dispatching center on a twenty-four-hour basis.

(2) Every tow vehicle or flatbed vehicle shall be equipped with the following:

(a) At least one amber rotating beacon or strobe light mounted on the highest practical location on the vehicle, visible from 360° when in use and visible at a minimum distance of 500 feet during daylight hours. An amber light permit, as required by the state, must be filed in the office of the Chief of Police and Township Clerk.

(b) Safety tow lights or magnetic tow lights for towing vehicles at night, amber or red colored.

(c) Extra chains and cable for pulling or securing a towed vehicle.

(d) At least one heavy-duty broom, a shovel, a crowbar or pry bar, a set of jumper cables, a flashlight, one two-pound or larger fire extinguisher of dry chemical type, one dozen flares or similar warning devices for placement at the scene of an accident or behind a disabled vehicle, at least 10 pounds of dry sand or a drying compound for gasoline and oil spilled on the roadway and containers for removal thereof and a sufficient quantity and sufficient types of tools to enable the tow vehicle operator to perform proper and adequate emergency repair services for the tow.

(3) Every tow vehicle or flatbed vehicle shall comply with any and all state, federal and local laws, regulations and ordinances pertaining to safety, lighting and towing equipment requirements and shall be subject to inspection by the Chief of Police or his/her designee at any time. Where applicable, all permits required by other agencies than the Borough shall be provided to the Borough upon request.

(4) Every tow vehicle or flatbed vehicle shall display the official tower's decal and shall have the name of the official tower, by a permanently affixed or painted sign, prominently displayed on the vehicle in such manner so as to conform to the provisions of N.J.S.A. 39:4-46. such demarcations shall be placed on the outside door panels of the vehicle. The sign shall be at least three inches in height and diameter and be visible to the naked eye, and the names must be the same on both panels.

(5) Within five business days of the expiration of each rotation period, the official tower shall submit to the Borough Clerk a copy of all of the invoices for services rendered to any owner or operator of a damaged or disabled vehicle on a form of invoice provided by the Borough. In the absence of a Borough form, the official tower will submit the bills which state the name and address of the person towed, the make and model of the vehicle towed, the plate number and the in date of the tow and the out

date of the tow. Only fees applicable in this chapter shall appear on said invoice, and there shall be only one invoice per vehicle towed.

B. Minimum personnel requirements.

Official towers shall have available, at all times, a minimum of two drivers to provide the services required by this chapter. All drivers employed by official towers to provide the services required by this chapter shall meet the following requirements and be subject to the following regulations:

- (1) They shall be competent and able to provide minimum road services for disabled vehicles.
- (2) All drivers required to have a commercial driver's license (CDL) by the State of New Jersey and/or federal regulations are required to furnish such license for the purpose of this chapter.
- (3) They shall obey all traffic laws and regulations.
- (4) They shall not have been convicted of a crime within the past year.
- (5) All drivers who do not possess a CDL must submit to random drug testing two times each year.

E. Minimum storage requirements.

(1) Every official tower shall maintain an inside building and/or outside secured storage area meeting the following requirements:

(a) All official towers must have sufficient storage area on their own premises to store towed vehicles at the licensed site. This area must be over and *above* the requirement that is in effect for requirement of parking for that site. No vertical stacking of vehicles is permitted. The storage area must be contiguous to the applicant's principal place of business. Each tow vehicle must be stored at the office tower's licensed site. Official towers located within the Borough cannot store vehicles on the thoroughfares of the Borough of Westwood, whether under the auspices of the Borough, County of Bergen, or State of New Jersey, without Borough approval. Storage of vehicles on the thoroughfares of other municipalities wherein Borough towers are located is subject to the requirements of those municipalities.

(b) The location of the storage area shall be located within the limits of the Borough or within three miles of the Borough limits.

(c) Each licensee shall have an area with space for a minimum of 10 vehicles.

(d) The storage area shall be in an area legally zoned for or legally nonconforming for such use; the certificate of occupancy is to be furnished with the application.

(e) The storage facility shall be available from at least 8:00a.m. Until 6:00 p.m. Monday through Friday, and from at least 8:00 a.m. until 1:00 p.m. on Saturday. The applicant shall prominently display the hours during which the facility will be open on weekends. The storage area must have a building wherein a permanently installed telephone is located. The building shall be within sight distance and/or within 500 feet of the entrance of the storage area. On the application for a towing license, the applicant shall list all business hours required pursuant to this subsection for the calendar year of the license in question, which shall not be changed during the calendar year.

- (f) The official tower shall not charge any additional fee or other charge for releasing vehicles to their owners after normal business hours or on weekends or for moving a vehicle from one location to another in the storage area.
- (g) The applicant shall, with its application, submit proof of ownership or lease of the storage area.
- (h) The official tower shall be responsible for ensuring the proper and safe storage of all vehicles towed pursuant to this chapter. The official tower shall be liable for any damage incurred by such vehicles while in transit to or while stored in the storage areas.

(2) To ensure the timely release of a vehicle, the tower shall release a vehicle to the owner/occupier of the vehicle no later than one hour from the vehicle's arrival at the tower's facility or within one hour of being contacted by the owner/occupier of the vehicle that he/she wishes to take possession of said vehicle during regular business hours.

F. Credit cards.

All official towers must have the ability to receive credit card payment and will accept same for payment of all towing and storage services included, specifically or by reference, in this chapter.

§ 358-11. Utilization of list of official towers.

A. Official towers shall be placed on the list in the order in which their application is approved and license issued. Once the initial list has been established, new official towers, when their applications have been approved, will be added to the end of that list.

B. The Borough shall request wrecking, towing and storage services from each official tower in rotation. When called, the tower shall advise the dispatcher if a vehicle is available and the estimated time of arrival. If no tower vehicle is available or if the response time will exceed 20 minutes, the next official tower on the list shall be called. If none of the official towers are available or able to provide such services as are requested by the Borough, the Borough may request such services from any other available source. All requests shall be made by the Chief of Police or his/her designee.

C. The Borough shall request service only from official towers; provided, however, that if no emergency or road hazard exists, the Chief of Police or his/her designee shall allow a request of such service from such other person as the owner of the motor vehicle in need of such services, may obtain, provided that the request is responded to within 15 minutes.

D. During adverse weather conditions, heavy traffic conditions or emergency conditions, official towers shall give priority to requests from the Borough over any other requests, which may be received by the official towers.

§ 358-12. Hold harmless agreement.

The applicant shall agree, in writing, to assume the defense of, and indemnify and hold harmless, the Borough, its elected officials, boards, commissions, officers, employees and agents from all suits, actions, damages or claims to which the Borough may be subjected of any kind and nature whatsoever resulting from, caused by, arising out of or as a consequence of the provision of towing, wrecking, storage and/or emergency services provided at the request of this Borough pursuant to this chapter. Official towers shall enter into a hold harmless agreement in a form to be prepared by the Attorney for the Borough prior to being included in the official towers list.

§ 358-13. Insurance.

A. No person shall be included on the official towers list unless and until such person has provided to the Borough a certificate(s) of insurance evidencing that there is in effect the following insurance coverage.

(1) General property damages and liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 per aggregated general liability, including additional garage keeper's coverage, shall be primary as respects vehicles of others and shall include collision coverage.

(2) Garage keeper's liability insurance in an amount not less than \$500,000 per location shall be required. No deductible amounts are permitted. The words "no deductible" shall be included on the policy and/or certificate of insurance.

(3) Workers' compensation as required by law shall be required.

B. Policies of insurance shall be written by insurance companies authorized to do business in the State of New Jersey.

C. The Borough of Westwood shall be named as an additional insured on all policies of insurance provided pursuant to this chapter. All certificates of insurance shall provide 30 days' written notice to the Borough. Such insurance shall be primary.

D. Policies of insurance required by this chapter shall be maintained in full force and effect at all times. In the event that any coverage is cancelled or terminated or coverage decreased in amount, the tower shall be removed immediately from the official towers list until such time as the required coverage is reinstated or replaced.

§ 358-14. Towing and storage fee schedule.

No towing operator or firm licensed under this chapter may charge rates in excess of the following for towing, conveying, road service, administrative charges or storage of a motor vehicle when dispatched by the Westwood Police Department.

(1) Service charges shall be as follows:

(a) Jump starts: Flat rate of \$55.

(b) Road service at any other time: \$65, flat rate.

(c) The service charge assessed for the release of a towed vehicle during other than the business hours of 8:00 a.m. to 6:00 p.m.: \$25.

(2) Towing charges shall be as follows:

A. Light Duty Tow or Flatbed Tow, \$125 any time of day or night, plus \$5 per mile after the first 5 miles.

B. Medium Duty Tow, \$175, anytime of the day or night, plus \$6 per mile after the first 5 miles.

C. Heavy Duty Tow, \$400, inclusive of the first hour of rigging, decoupling, hookup or preparation for towing and \$10 per mile after the first 5 miles. Any additional heavy-duty tow truck which may be needed shall be charged at the rate of \$250, inclusive of the first hour of rigging, decoupling, hookup or preparation for towing and \$10 per mile after the first 5 miles. An additional charge of \$200 per hour may be charged for specialty work related to heavy duty towing for work that goes beyond the first hour.

D. Labor rates for assistance, if needed, shall be charged at the following rates:

Additional (beyond the initial operator / driver) Certified Recovery Specialist: \$200 per hour

Certified Towing Operator: \$125 per hour

Laborer: \$100 per hour.

(3) Miscellaneous

- A. Dolly service charges shall be \$40.
- B. Winching service charge per tow, \$60. No person shall pay this fee on a standard tow. Winching, payable under this section, would include an act of pulling a vehicle from a ditch onto the roadway for towing. [Amended 3-20-2018 by Ord. No. 18-3

4. Storage

- A. Any vehicle that is towed under this ordinance shall include storage at the tower's facility for up to 8 hours. The first day storage rate shall commence after 8 complete hours of storage.
- B. The service charge for storage of passenger vehicles/SUVs shall be charged on a daily rate after 24 hours as follows:
 - (a) Inside building storage facility with a capacity: \$45 per day.
 - (b) Outside secured storage facility with a capacity of 10 or more spaces: \$35 per day.
 - (c) Outside storage for commercial vehicles or trucks over one ton: \$75 per day.
 - (d) Outside storage for commercial vehicles over 25,999 GVW, buses, tractor-trailers, etc.: \$95 per day.
- C. Notwithstanding the foregoing provisions, no towing operator licensed by the Borough of Westwood shall charge or receive fees for towing, services or storage at rates higher than that customarily permitted by the Department of the Attorney General, Consumer Affairs and as listed in this ordinance.

§ 358-15. Miscellaneous provisions.

- A. Copies of this chapter and the schedule of fees that may be charged by official towers shall be made available to the public during normal business hours at the Municipal Building. Copies shall also be made available to the public at each official tower's place of business.
- B. All official towers shall post, in a prominent place at each storage area, clearly visible to the public, a schedule of fees that may be charged for all services, provided that the same is pursuant to this chapter.
- C. The Borough reserves the right to make periodic unannounced inspections of the personnel, vehicles, and equipment and storage areas of all official towers.
- D. The relationship between an official tower and the Borough is one of an independent contractor. Neither party shall be construed in any manner whatsoever to be an employee of the other, nor shall any employee or agent furnished by any party be construed to be an employee or agent of the other party. Inclusion on the official towers list shall not be construed or considered as a joint venture, partnership, association, contract of employment or profit-sharing agreement
- E. The Borough shall not be liable or responsible for compensating the official towers for any of the services performed under this chapter. Compensation shall be the responsibility of the owner of the towed motor vehicle, and the official tower shall proceed directly against the owner.
- F. The official tower shall, at all times, be solely responsible for the conduct of its employees.
- G. Each official tower shall keep and maintain adequate and complete records showing all vehicles towed, stored and released, all service rendered and all fees charged and collected. All records shall be available for inspection by the Borough at any time during normal business hours. Records shall be kept and maintained by the official tower at one central location and shall be retained for a period of seven

years. Records may be written, printed or computerized as long as the requirements of this subsection are met.

H. The Borough of Westwood will utilize the duty tow company for the towing of Borough owned and operated vehicles as a result of accident, damage or repair. Any towing of Borough vehicles shall not incur an expense to the Borough unless the vehicle is towed in excess of 10 miles from its place of pickup by the authorized towing company.

§ 358-16. Enforcement agency; suspension or revocation of license.

A. The Westwood Police Department shall be the enforcement agency. The enforcement agency shall have the authority to hear complaints against any official tower whether brought by Borough representatives, the public and/or other official towers.

B. The enforcement agency shall have the power to issue subpoenas to compel attendance at the hearing. Failure to attend a hearing with result in the automatic suspension of the towers license.

C. In the event that a complaint (of a noncriminal nature) is received by the Borough, involving the improper or unsatisfactory performance of services by an official tower, excessive charges or damage to a motor vehicle while in the custody of the tower, the enforcement agency shall give written notice of said complaint, by certified mail, return receipt requested, to the official tower against whom the complaint is made. The official tower shall make a written response to such complaint within five calendar days from receipt of the written notice.

D. The enforcement agency, after hearing the matter, shall have the authority to suspend the official tower's license until the next rotation. Any contestation of such action by the enforcement agency shall be made by way of appeal to the Borough Council within 14 calendar days of the notice of said suspension. The Borough Council shall then conduct a hearing regarding the appeal of the suspension at the next public Council meeting or within 30 calendar days of the tower's notice of appeal.

E. In the event that two or more complaints are pending for over 30 days in Municipal Court, then the enforcement agency may suspend the official tower's license after a hearing and decision by the enforcement agency.

F. If, after considering the matter and the findings by the enforcement agency, the Borough Council shall determine that there is good and sufficient cause for revocation of the official tower's license, the tower shall surrender said license to the Borough Clerk within one calendar day.

G. Failure to surrender the license upon revocation shall constitute a violation of this chapter, subject to all legal action available to the Borough, including permanent removal from the official towers list.

H. Nothing contained herein shall prevent or limit the right of any person to commence or maintain an action for damages or any other relief directly against an official tower in a court of competent jurisdiction.

I. Any company that applies to be a municipal towing provider for the Borough of Westwood shall maintain a file that is in order by date of service. The file shall be stored and available for immediate inspection, at the business office of the towing operator, by the Borough of Westwood Police Chief or his designee. This file shall hold all towing requests and bills for service provided by the towing operator and include the following information:

1. Date of Service
2. Name of Person whose vehicle was towed with a contact phone number
3. An itemized listing of all fees charged

4. Disposition of payment and who was the payee
5. Original signature of the payee once bill is satisfied. In lieu of an original signature, a copy of an insurance check can be included in the file for payment received from an insurance company.
This file shall be up to date and available for inspection during the hours of 8:00 am & 4:30 pm Monday through Saturday. Failure to have this file up to date or placement of false or misleading information on this file shall subject the towing operator to immediate suspension from the rotation list pending a hearing in front of the Westwood Governing Body.

§ 358-17. Violations and penalties.

A. In addition to any suspension or revocation of license, a person who shall violate any of the provisions of this chapter shall be subject to the following:

- (1) Punishment by a fine not exceeding \$3,000 or imprisonment for a term not exceeding 90 days, or for a period of community service not exceeding 90 days, or any combination of them, for a first offense at the discretion of the Municipal Court. For a second or subsequent offense, punishment by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 90 days, or for a period of community service not exceeding 90 days, or any combination of them. The minimum fine for violation of any provision of this chapter shall be a fine of \$1,000.
- (2) Each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense; and
- (3) The imposition of a fine or imprisonment, or both, for a violation of this chapter of the Code shall not be deemed to be in lieu of any other provision therein providing for revocation or suspension of any license or permit issued thereunder.

B. In addition to the fine provided above, a violation of any of the provisions of this chapter shall be cause for revocation of the official tower's license.

Section 3. If any section, subsection, part, clause or phrase of this Ordinance shall be declared invalid by judgment of any court of competent jurisdiction, such section, subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

Section 4. This Ordinance shall take effect immediately upon final passage and publication as required by law.

Adopted: _____

Approved:

Attest:

Ray Arroyo, Mayor

Karen Hughes, Borough Clerk