



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-2

**Date:** August 9, 2006

**Subject:** Request that the City Council consider adopting an ordinance authorizing the Tyler Police Department to adopt a city-wide policy for towing vehicles when the operator has no proof of financial responsibility, and establishing related fees.

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**Item Reference:** Texas Transportation Code Chapter 601; Tyler City Code Chapter 4, Article IV.

State law, at Texas Transportation Code Section 601.051, provides that a person may not operate a vehicle in the State of Texas unless financial responsibility is established for that vehicle. Over the past several months, a number of municipalities have adopted towing policies to authorize police officers to tow vehicles when the owner does not have, or cannot show proof of, the State-required financial responsibility. City Staff is requesting that the Tyler City Council adopt the attached ordinance, which would officially authorize the Tyler Police Department to adopt a General Order establishing a policy for towing vehicles without the required financial responsibility.

Police Officers would make a reasonable attempt to verify the appropriate coverage. If an officer believed there to be mitigating circumstances, then the officer would have the discretion not to tow the vehicle. Following a traffic stop, an officer would be authorized to tow a vehicle in situations where the person could not present proof of financial responsibility and if it were determined that the driver had a previous conviction for failure to maintain financial responsibility on the vehicle. Following an accident, an officer would be authorized to tow a vehicle where the person could not present proof of financial responsibility, regardless of whether the driver had a previous conviction for failure to maintain financial responsibility on the vehicle or not. If a vehicle were towed under the policy, the City's wrecker rotation list would be used. The vehicle's operator would be required to obtain a financial responsibility verification form from the Police Department before a vehicle towed under this policy could be released. The attached ordinance also establishes a \$5.00 administrative fee that would cover the City's costs associated with issuance of the financial responsibility forms. The tow truck policy is designed to protect the public safety by reducing the number of uninsured vehicles on the public highways.

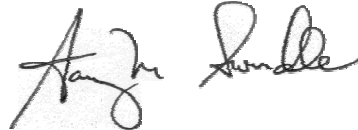
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**RECOMMENDATION:**

It is recommended that the City Council adopt the attached ordinance authorizing the Tyler Police Department to adopt a city-wide policy for towing vehicles when the operator has no proof of financial responsibility, and establishing related fees.

**Drafted/Recommended By:  
Department Leader**

A handwritten signature in black ink, appearing to read "Gary Swindle". The signature is written in a cursive, flowing style.

Gary Swindle

**Edited/Submitted By:  
City Manager**

**ORDINANCE NO. O-2006-71**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE IV., "POLICE – CRIME PREVENTION", ALARMS", AUTHORIZING THE TYLER POLICE DEPARTMENT TO ADOPT A CITY-WIDE POLICY FOR TOWING VEHICLES WHEN THE OPERATOR HAS NO PROOF OF FINANCIAL RESPONSIBILITY; AND ESTABLISHING A FEE FOR FINANCIAL RESPONSIBILITY FORMS ; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, Texas Code of Criminal Procedure Article 2.13 provides that it is the duty of every peace officer to preserve the peace within the officer's jurisdiction, and to effect such purpose, the officer shall use all lawful means; and

**WHEREAS**, Texas Code of Criminal Procedure Article 2.13(b)(1) provides that a peace officer shall in every case authorized by the Code of Criminal Procedure, interfere without warrant to prevent or suppress crime; and

**WHEREAS**, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Texas Transportation Code Section 601.051 provides that a person may not operate a vehicle in the State of Texas unless financial responsibility is established for that vehicle; and

**WHEREAS**, Texas Transportation Code Section 601.053(a) provides that as a condition of operating a motor vehicle to which Section 601.051 applies, the operator shall on request provide to a peace officer evidence of financial responsibility; and

**WHEREAS**, Texas Transportation Code Section 545.305(8) authorizes a peace officer to move a vehicle from a highway if the vehicle is operated by a person an officer arrests for an alleged offense and the officer is required by law to take the person into custody; and

**WHEREAS**, Texas Transportation Code Section 545.305(d) states that the owner of a vehicle that is removed or stored under Section 545.305 is liable for all reasonable towing and storage fees incurred; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER:**

**PART 1:** That Tyler City Code Chapter 4, “Offenses and Miscellaneous Provisions”, Article IV., “Police – Crime Prevention”, is hereby amended by adding a new Section 4-73 to read as follows:

**Sec. 4-73. Police towing policy authorized; operators without proof of financial responsibility; financial responsibility verification form; fee.**

The Tyler Police Department is hereby authorized to adopt a city-wide policy for towing motor vehicles when the operator of the vehicle either fails to maintain, or cannot present proof of, financial responsibility required by the State. Tyler Police Department officers are hereby authorized to remove or impound any vehicle where the operator has failed to maintain, or cannot present proof of, the required financial responsibility. The Police Department is also authorized to develop and require a financial responsibility verification form for any operator to

obtain release of any vehicle removed or impounded pursuant to this Section and Tyler Police Department policy. The fee for said financial responsibility verification form shall be *five dollars (\$5.00)*. Said fee shall be in addition to any applicable towing or storage charges. (Ord. No. 0-2006-71, 8/9/06)

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be August 11, 2006. This ordinance shall have an effective date of August 11, 2006.

**PASSED AND APPROVED** this 9<sup>th</sup> day of August, A. D., 2006.

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JOSEPH O. SEEBER, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

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CASSANDRA BRAGER, CITY CLERK

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CITY ATTORNEY