

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: September 13, 1999

FROM: CITY MANAGER

TITLE OF PROPOSED ORDINANCE: AN ORDINANCE OF THE CITY OF PASADENA AMENDING SECTION 10.46 OF THE PASADENA MUNICIPAL CODE TO ESTABLISH EXCLUSIVE FRANCHISING OF POLICE TOWING

PURPOSE OF ORDINANCE: This ordinance, if approved by six council members, will change the present system of non-exclusive franchising for police towing services to one in which a single exclusive franchise is awarded for police towing. This ordinance also establishes minimum qualifications for bidders for the exclusive franchise and establishes the procedure under which the franchise may be awarded.

REASONS WHY LEGISLATION IS NEEDED: In January 1997, the City Council, acting on the recommendation of the City Manager, established a non-exclusive franchise for vehicle impound and storage services. The impetus for the franchise was an amendment to the California Vehicle Code that established a mandatory thirty-day impound for vehicles operated by unlicensed drivers.

One of the effects of this new regulation was to increase the amount of revenue available to towing and storage operators through an increase in the number of vehicles impounded as well as a general lengthening of storage time, for which they charge a daily fee. The potential revenue available to towing operators was deemed sufficient to warrant the establishment of a franchise

MEETING OF 11/08/99

AGENDA ITEM NO. 9.A.(2)

whereby operators would pay a fee to the city for the right to provide these services for the Police Department. Prior to the change in regulation, towing operators paid no fee to the City.

It should be noted that other cities have established franchises for police towing services. The City of Montebello established an exclusive franchise. In the City of Los Angeles, the Police Commission awards one exclusive franchise for each of the City's eighteen police divisions. The amount of revenue available to towing operators who hold these franchises is so significant that firms seeking to bid on the contracts have sued the City of Los Angeles to put the contracts out for competitive bidding.

Staff's prior recommendation to establish a non-exclusive franchise, as opposed to an exclusive, was based primarily on the fact that the City had been using three local businesses to perform these services and an exclusive franchise would negatively impact two of these local operators.

In April 1998, City Council awarded non-exclusive franchises to S.N. and Sons, Johnnies Tow Service and Master Two Service. Each franchise had a term of one year, and pursuant to the terms of the franchise agreement, each franchisee was to pay the City \$50,000, payable in quarterly installments of \$12,500.

At the conclusion of the first quarter, the City received only \$6,200 from each franchisee. In addition, the franchisees,

September 13, 1999

acting through joint legal counsel, requested a reduction in the franchisee fee due to the failure to generate anticipated income. City staff met with representatives of the franchises and it was agreed that since the franchisee fee was established based on the projected gross revenue collected as a result of the franchise, an audit would be performed by the City to determine whether such revenue was actually being achieved. Accordingly, the City selected a single franchisee to serve as a representative of the three, and in February 1999, the audit was conducted.

The results of the audit concluded that the originally anticipated revenues were being collected. Nevertheless, it was determined that other factors may impact the ability of the franchisees to each pay the \$50,000 fee. The franchise agreements expired on April 6, 1999, and no additional fees beyond the initial payment of \$6,200 per franchisee have been received.

Staff has considered ways in which the franchise could be modified to minimize a repeat of this situation. One alternative would be to preserve the non-exclusive nature of the franchise and simply lower the franchise fee. This approach, however, would likely result in a lower amount of revenue provided to the City than staff believes is possible. Therefore, staff recommends changing the franchise from a non-exclusive to an exclusive. Under an exclusive franchise system, operators interested in obtaining the franchise would have to bid against

one another in terms of the amount of revenue to be provided to the City. Such competition is judged to be the best way in which the City can be sure of securing the greatest level of revenue. Moreover, by establishing an exclusive franchise, the City is able to offer potential operators the option of proposing alternate fee structures such as a fixed annual fee, a percentage of gross receipts or a per car fee. This sort of flexibility is not possible under a non-exclusive arrangement where all operators would be required to pay an equal amount.

As mentioned previously, one of the considerations in establishing the franchise originally as a non-exclusive was whether any single operator possessed the necessary level of resources to meet the City's needs. Staff believes that while this remains somewhat of a concern, potential franchisees either currently possess the necessary resources or given the economic benefit of the franchise, will obtain any needed additional resources.

POLICY CHANGES: The City currently maintains non-exclusive franchising systems for such services as commercial solid waste disposal and police towing. This ordinance provides for an exclusive franchise for police towing systems. That represents a departure from the past practice of distributing police towing calls among several towing companies.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED: The public will benefit from the exclusive franchise system because of the greater regulation and oversight of police towing which franchising permits. The franchisee will have incentives to comply strictly with the requirements of the franchise and the fee system, which is discussed in the next section. The administrative burdens imposed on the Police Department traffic section by the rotational system currently used to assign towing calls to particular companies will be eliminated.

FISCAL IMPLICATIONS: There is a negligible cost associated with modifying the towing franchise from a non-exclusive to an exclusive. The towing franchise and the associated franchise fees do not increase the costs paid by vehicle owners, as these rates are fixed and established by City Council. The current rates of \$75 per impound and \$15 per day are consistent with the fees charged by other agencies in the Southern California area, including the Highway Patrol, City of Los Angeles and Los Angeles County. In essence, the franchise requires service providers to

/ / /

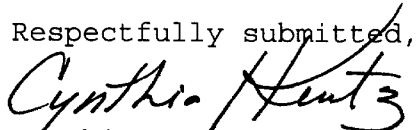
/ / /

/ / /

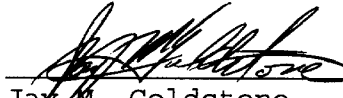
City Council
Page 6

September 13, 1999

share a portion of the revenue they receive as a direct result of the City granting them the right to perform services on its behalf.

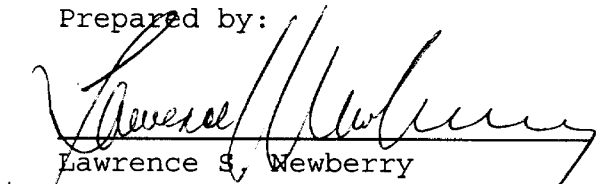
Respectfully submitted,

Cynthia J. Kurtz
City Manager

Concurrence:



Jay M. Goldstone
Director of Finance

Prepared by:



Lawrence S. Wewberry
Assistant City Attorney

Introduced by Councilmember

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA AMENDING SECTION 10.46
OF THE PASADENA MUNICIPAL CODE TO ESTABLISH EXCLUSIVE
FRANCHISING OF POLICE TOWING SERVICES

The people of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by section 508 of the Charter of the City of Pasadena. The approved summary of this ordinance is as follows:

"SUMMARY

The purpose of this amendment changing Section 10.46 of the Pasadena Municipal Code in its entirety is to establish an exclusive police towing franchise in place of the current non-exclusive franchise system. This change to an exclusive franchise will enhance the City's ability to enforce standards and procedures for the protection of the public, will provide a predictable and better supervised level of service to the public and will assure the payment of required franchise fees on a more consistent and verifiable basis to enhance police services and for other municipal purposes.

To these ends, this ordinance establishes the minimum qualifications for potential franchisees, specifies the method of

selection of the franchisee and sets forth the continuing service and financial obligations of the franchisee."

SECTION 2. Pasadena Municipal Code chapter 10.46 is amended in its entirety to read as follows:

"CHAPTER 10.46

EXCLUSIVE FRANCHISING OF POLICE TOWING SERVICES

Sections:

10.46.010	Definitions
10.46.020	Police impound towing franchises - Purpose and declarations
10.46.030	Activities which are unlawful unless authorized and activities not covered
10.46.040	Exclusive franchise - City Council to grant
10.46.050	Exclusive franchise - Terms and conditions
10.46.060	Application for exclusive franchise
10.46.070	Public hearing
10.46.080	Criteria for granting exclusive franchise
10.46.090	Requirements for franchise
10.46.100	Indemnification of city
10.46.110	Liability insurance
10.46.120	Term of exclusive franchise
10.46.130	Termination or suspension of exclusive franchise by the City Council
10.46.140	Temporary suspension by Police Chief- When
10.46.150	Exclusive franchise transfer or assignment
10.46.160	Exclusive franchise fees
10.46.170	City inspection authority
10.46.180	Rights reserved to city
10.46.190	Violation - Penalty
10.46.200	Providers of police towing services prior to award of exclusive franchise

10.46.010 Definitions.

For the purposes of this chapter, certain terms used herein are defined as follows:

A. "City Council" means the City Council of the City of Pasadena.

B. "City" means the City of Pasadena.

C. "Franchisee" means the entity granted an exclusive franchise by the City pursuant to this chapter.

D. "Police Chief" means the Police Chief of the City of Pasadena or authorized representative.

E. "Police Towing" means towing of vehicles to impound or to other locations and the storage of such vehicles as ordered and designated by authorized members of the Pasadena Police Department or their designees for purposes of law enforcement within the City.

10.46.020 Police Towing Franchises -

Purpose and declarations.

A. It is hereby declared and determined that the business of police towing affects the health, safety and public welfare of the residents of the City. The custody and control of vehicles owned by the public which are towed and /or stored at the order of the Pasadena Police for purposes of impound or facilitation of traffic flow require a high degree of proficiency with the procedures established by the California Department of Motor Vehicles and a high level of trust and confidence by the public and the police department in the facilities used for storage and the personnel and equipment utilized for towing vehicles to impound, many of which may be of high value, may be or contain evidence of criminal activity, and which, if improperly towed or stored, may result in legal action against the City. The further

responsibility of the police towing franchisee is to collect only the prescribed fee from owners of impounded vehicles and to release said vehicles promptly and efficiently, but only upon the evidence of proper documentation. The towing franchisee must demonstrate the most effective facilities, control systems and knowledgeable personnel to protect the interests of the City and vehicle owners. Therefore, it is a purpose of this chapter to regulate this service to the police department, to reduce the administrative burden to the police department of distributing towing assignments among more than one contractor and to minimize any adverse effects upon the citizenry.

B. It is hereby recognized that the city is required to adopt and implement a mechanism to promote the safe and efficient towing to impound of vehicles and that City may impose franchise fees to fund the cost of this effort and to augment the funds available for purposes of law enforcement.

C. The City, by the adoption of Article XI of the City Charter, having elected to implement the home rule provisions of Article XI of the Constitution of the State of California as to municipal affairs and the granting of exclusive franchises of the nature referred to herein as being within the class of actions designated to "Municipal Affairs," hereby declares that the provisions of the chapter, together with the provisions of the charter of the City of Pasadena, shall constitute the exclusive procedure for the grant of a franchise for conducting police

impound towing and storage services.

10.46.030 Activities which are unlawful unless authorized;

Activities Not Covered

Except as specified in this chapter it is unlawful for any person to solicit or perform the business of police towing in the City unless:

A. A franchise therefor has first been granted pursuant to the provisions of this chapter and such franchise is in full force and effect; and

B. A written franchise agreement therefor has been executed between such person and the City and such agreement is in full force and effect; and

C. All franchise fees due and payable to the City on account of any previous police towing franchise have been paid in full.

D. This chapter shall not apply to towing, repair or storage services performed for or made available to members of the public by any person other than police towing.

10.46.040 Exclusive franchise - City Council authority to grant.

The City Council may and is hereby empowered to grant by the affirmative vote of 6 members, to the applicant deemed best qualified, an exclusive franchise to engage in the business of police towing vehicles in response to police requests for towing services for purposes of impoundment, storage or other law

enforcement purposes within the City of Pasadena.

10.46.050 Exclusive franchise - Terms and conditions.

A. The franchise granted to the City's exclusive franchisee pursuant to this chapter shall be exclusive. It is the intent of this chapter to require that no person other than the city's exclusive franchisee may engage in the business of police towing within the City of Pasadena.

B. The franchise awarded hereunder shall be subject to the terms and conditions specified in the city charter and in this chapter, in the resolutions and ordinances granting the franchise and in the terms and conditions of the franchise agreement.

C. In granting the franchise, the City Council may prescribe such other and additional terms and conditions, not in conflict with the city charter or this chapter, as in the judgment of the City Council are in the public interest.

10.46.060 Application for franchise.

Any person who intends to apply for the franchise for police towing shall may do so by filing with the Police Chief, upon forms supplied by city and in accordance with the Request for Proposals issued by the City, a verified application containing at a minimum the following information:

A. Name and address of applicant;

B. If the applicant is a partnership, the name and address of each partner shall be set forth in the application. If the applicant is a corporation, the application shall state the names

and addresses of the corporation's directors, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies.

C. A list of all vehicles, including license plate numbers and vehicle identification numbers, to be used in connection with the franchise for which the application is filed.

D. A list of all personnel assigned to perform services pursuant to such franchise accompanied by the California drivers' license number and license class of each such person.

E. Proof of insurance in a form acceptable to the City.

F. Such other and further information as the Police Chief, the director of finance or the City Council may reasonably require to evaluate and process an application.

10.46.070 Public hearing.

A. Upon receiving the applications for the franchise under the provisions of this chapter, the Police Chief shall present the applications to the City Council at a regularly scheduled meeting thereof.

B. At such meeting, or within a reasonable time thereafter, the City Council shall adopt a resolution giving notice of the intent to award the exclusive franchise hereunder and of the applications received for that purpose and setting a date and time for a public hearing on the application. The resolution shall give notice that of the city's intent to award an exclusive franchise for police towing and that applications

have been filed for that purpose under this chapter. Such resolution shall refer to and incorporate by reference the applications on file with the Police Chief, and shall contain notice of the time and place the City Council will hear persons desiring to be heard in favor of or in opposition to the granting of the franchise.

C. The hearing on the applications for the police towing franchise shall be held not earlier than the fourteenth day following the date of adoption of the resolution giving notice of the applications on file and of the city's intent to award such franchise. The City Clerk shall cause the resolution giving notice of the intent to award the exclusive police towing franchise and of the time and place of hearing on the applications for such franchise to be published at least once in a newspaper of general circulation in the city at least ten (10) days prior to the date set for the hearing.

D. At the hearing on the award of the police towing franchise, the City Council shall give all persons desiring to be heard a reasonable opportunity to present evidence or otherwise be heard in favor of or in opposition to the granting of the franchise or with respect to any applicant for such exclusive franchise. At such hearing, the City Council may require from any applicant such additional information as the City Council may deem relevant and necessary. The hearing may be continued or adjourned to a stated time and place without the giving of

further notice.

10.46.080 Criteria for granting exclusive franchise.

A. Upon conclusion of the hearing on the granting of the franchise, or within a reasonable time thereafter, the City Council shall render its decision. The exclusive franchise shall be granted based upon compliance with this chapter. Any grant of a franchise by the City Council may be subject to such additional terms, conditions, rules, regulations, restrictions and limitations as the City Council deems necessary to protect the public health, safety or welfare.

B. The city shall issue a notice to any applicant who has not been awarded the franchise that its service will not be utilized for towing vehicles as described in this chapter and that it may not engage in the service of police towing.

10.46.090 Requirements for franchise.

The franchise granted pursuant to this chapter shall not become effective unless and until all of the following requirements have been satisfied:

A. The ordinance granting the franchise is effective.

B. The successful applicant and the city have signed, by their duly authorized representatives, a franchise agreement.

C. Applicant has provided an acceptable list of the vehicles to be used to perform the services herein by registration or license number and the personnel assigned thereto as required herein.

D. The applicant has provided evidence of compliance with the insurance requirements and any other terms and conditions of this chapter, including the requirement that any previous franchise fees for police towing due and owing to the city have been paid in full and any other terms and conditions imposed by the police chief.

10.46.100 Indemnification of city.

The franchise agreement shall provide that the franchisee shall indemnify, hold harmless, release and defend the city, its City Council and each member thereof, and its officers, employees, commission members and representatives, from and against any and all liability, claims, suits, costs, expenses, fines, judgments, settlements, charges or penalties whatever, including reasonable attorneys fees, regardless of the merit or outcome of the same arising out of, or in any manner connected with, any or all of the operations or services authorized, conducted or permitted under a exclusive franchise agreement granted under this chapter.

Applicants for the police towing franchise shall sign an affidavit in a form acceptable to the City Attorney which confirms their understanding of and agreement to the obligations imposed under this section, as a part of the application for the franchise hereunder.

10.46.110 Liability insurance

The City Council shall establish by resolution the minimum

levels and standards of liability insurance which must be maintained in order to apply for, to receive and to operate a franchise under this chapter. The City Council shall also establish by resolution the manner in which compliance with the minimum standards is demonstrated. The failure to maintain the minimum levels and standards of liability insurance for any period of time is a violation of this chapter and shall be sufficient grounds for temporary suspension or termination of the exclusive franchise under this chapter.

10.46.120 Term of exclusive franchise.

The term of the franchise granted under the provisions of this chapter shall be for three (3) years unless earlier terminated under the terms of this chapter.

10.46.130 Termination of exclusive franchise by the City Council.

A. The City Council shall have the right to terminate or to suspend any franchise awarded pursuant to this section.

B. A notice of intent to terminate the exclusive franchise shall be personally delivered or mailed by certified mail, at the discretion of the Police Chief, to the party named and to the address given on the application pursuant to which such exclusive franchise was issued. The notice shall state the grounds for termination or suspension and shall give the franchisee notice of a hearing before the City Council thereon, which shall be convened no more than 60 days after the date of notice unless the

hearing cannot reasonably be set within such time, in which case the hearing shall be set as promptly as may be practical. The hearing shall be conducted and closed, and decision rendered thereon, within 60 days after the date of the notice unless it cannot then reasonably be completed, in which case it shall be completed as promptly as may be practical. The City Council shall have the right to terminate any exclusive franchise granted pursuant to this chapter by ordinance by the affirmative vote of 6 members if the City Council finds, based upon a preponderance of the evidence, after a public hearing, that:

1. The franchisee has failed to comply with, or to do anything required of the franchisee by this chapter, or that franchisee has failed to pay the franchise fees required under this chapter or violated any provision of the ordinance granting the exclusive franchise, or any provision of the exclusive franchise agreement or any ordinance of the city or any law of the State or of the United States in connection with the performance of the exclusive franchise or that franchisee's conduct demonstrates that the franchisee is unable to unwilling to comply with the terms of the exclusive franchise.

2. Should any provision of this chapter become or be declared to be invalid and the board expressly finds that such provision constitutes a material consideration to the grant or continuation of such exclusive franchise.

10.46.140 Temporary suspension by Police Chief.

The police chief may temporarily suspend the exclusive franchise without a hearing, whenever the continued operation by the franchisee would constitute a danger to public health, safety, welfare or public morals, including, without limitation, where there is a failure to maintain the minimum levels and standards of liability insurance or claims reserve or failure to keep in full force and effect any applicable licenses or permits required by federal, state or local law. The notice of temporary suspension may be personally delivered to the party named and to the address given on the application pursuant to which such franchise was issued, or, mailed by certified mail to the party named at the address given on the application pursuant to which such franchise was issued. The temporary suspension is effective upon the earlier of either receipt of said notice or the expiration of 5 days from the date of mailing. The notice of temporary suspension shall include a notice of the date and time for a termination hearing and all other information required by Section 10.46.130. The temporary suspension shall remain effective until the decision on termination by the City Council is made pursuant to Section 10.46.130 or unless the suspension is earlier lifted by written notice of the Police Chief.

10.46.150 Transfer or assignment of exclusive franchise.

The exclusive franchise granted pursuant to this chapter is a privilege to be held in trust by the original franchisee. Such exclusive franchise shall not be sold, leased, transferred,

assigned, or otherwise disposed of, either in whole or in chapter, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior consent of the City Council as expressed by an appropriate ordinance. The consent of the City Council shall be subject to such terms and conditions as it may prescribe.

10.46.160 Exclusive franchise fees.

A. The franchisee granted the exclusive police towing franchise pursuant to this chapter shall pay a franchise fee to the city during the term of such franchise. The franchise fee shall be in an amount as set forth in a resolution adopted by the City Council.

B. Franchise fees shall be due and payable quarterly. The first payment of franchise fees shall be due and payable within sixty days from and after the month during which the ordinance granting the franchise becomes effective, and thereafter payments shall be due and payable within sixty days from and after the end of each subsequent three month period. Each payment shall be calculated in accordance with the provisions of the resolution adopted by the City Council pursuant to subsection A.

C. The successful applicant for the franchise hereunder shall, as a condition of being awarded the exclusive police towing franchise, pay to the director of finance a deposit in the amount of 25% of the first year's franchise fee established by the City Council. One-third of the amount deposited shall be

credited against the franchise fees owed to the city by the franchise years at the end of each of the three years during which the franchise is effective, provided that the franchisee is not in arrears as to any payments of franchise fees, license fees or other payments owing to the city during the preceding twelve months. In the event that the exclusive franchise granted under this chapter is terminated for cause by the city during its term, or if the franchisee terminates or abandons its exclusive franchise, any amount remaining of its deposit shall become the sole property of the city.

D. The franchisee shall pay the required franchise fee to the city's director of finance. Each payment shall be accompanied by a written statement, verified by the franchisee or a duly authorized representative of the franchisee, showing in such form and detail as the director of finance may prescribe the calculation of the franchise fee payable by the franchisee and such other information as the director of finance may determine is material to a determination of the amount due.

E. No statement filed under this Section shall be deemed conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the city from demanding and collecting by appropriate action the sum that is actually due and payable.

F. The payment to the city by the franchisee pursuant to this chapter shall be in addition to any license fee or business

tax prescribed by the city for the same period.

10.46.170 City inspection authority.

The franchisee shall at all times maintain accurate and complete accounts of all revenues and income arising out of its operations under the franchise granted pursuant to this chapter; a list of vehicles towed, transported, or stored in impound; and any complaints by vehicle owners regarding same arising out of the performance of this franchise. Franchisee's books, accounts and records pertaining to any income or expense shall at all times be open to inspection, examination and audit by authorized officers, employees and agents of the city.

10.46.180 Rights reserved to city.

In addition to all other rights reserved to the city under this chapter, the following shall apply:

A. There is hereby reserved to the city every right and power, and the exercise thereof, which is reserved or authorized by any provision of any lawful ordinance or resolution of the city, whether enacted before or after the effective date of this chapter.

B. Neither the granting of the exclusive franchise nor any provision of the exclusive franchise shall constitute a waiver of or a bar to the exercise of any governmental right or power of the city.

C. The franchisee shall have no recourse whatsoever against the city, its officers, employees or agents, for any

loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any exclusive franchise issued under this chapter or because of the enforcement of this chapter.

D. There is hereby expressly reserved to the city the power and authority to amend any section of this chapter so as to require additional or greater standards on the part of the franchisee as well as the power and authority to increase the fees to be paid by the franchisee upon the award thereof pursuant to Section 10.46.160.

10.46.190 Violation - Penalty.

Any person subject to this chapter and engaging in police towing without a valid exclusive franchise therefor is deemed guilty of a misdemeanor which, upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment."

10.46.200 Providers of police towing services prior to award of exclusive franchise.

All persons or entities engaged in police towing services within the City prior to the effective date of this amendment to chapter 10.46 may continue to do so only until the date of the award of the exclusive franchise established herein, provided that such persons or entities are not in arrears with respect to any franchise fees due and owing to the city and are in compliance with all previously existing performance standards.

Immediately upon the award of the exclusive franchise for police towing, no person or entity other than the exclusive franchisee shall engage in the business of police towing in the City."

SECTION 3. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 4. This ordinance shall take effect thirty days after its publication by title and summary.

Signed and approved this _____ day of _____, 1999

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its regular meeting held _____, 1999, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Published:
Pasadena

Jane Rodriguez, City Clerk

APPROVED AS TO FORM:

Lawrence S. Newberry
Assistant City Attorney