

LOCAL FINANCE NOTICE

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TOWING SERVICES AND LOCAL UNIT REGULATION

This Notice concerns the responsibilities of local units (municipalities and counties) that coordinate or provide towing services through contracts with towing companies or the regulation of towing services within their jurisdiction. The Notice stems from a court order¹ issued on May 8, 2003 concerning the proper exercise by local units of their statutory responsibilities and obligations regarding both contracting for, and regulating the provision of towing services. It is issued jointly by the Division of Local Government Services and the Division of Consumer Affairs in the Department of Law and Public Safety.

An automobile insurance company initiated the case against a towing firm, six municipalities and the County of Bergen. The insurance company sought various forms of relief against the towing company for allegedly overcharging for towing services provided in the six municipalities and the county. The Office of the Insurance Fraud Prosecutor in the New Jersey Attorney General's Office intervened in the litigation to seek civil penalties against the two towing firms.

The litigation was eventually settled with the two towing firms agreeing to make certain payments to the insurance company and to make payment of civil penalties to the State of New Jersey. Further, the defendant municipalities were directed to audit their own records with regard to the provision of towing services. They were also advised to provide monthly reports to the public with regard to the information generated from the audits.

Additionally, the Court's order directed that the municipalities enforce such ordinances relating to towing services they may have adopted pursuant to N.J.S.A. 40:48-2.49 and N.J.S.A. 40:48-2.54 and enforce such contracts relating to towing services they may have executed pursuant to N.J.S.A. 40A:11-1 et. seq. The court also found that the municipalities had engaged in permitting unauthorized practices, such as providing free towing to employee owned, non-governmental vehicles.

In the order, the court directed that Bergen County advise its municipalities of their statutory responsibility to enact and enforce detailed regulations controlling the provision of towing services. They should also be strongly encouraged to review and implement any and all State statutes enacted to regulate the provision of towing services within their jurisdiction.

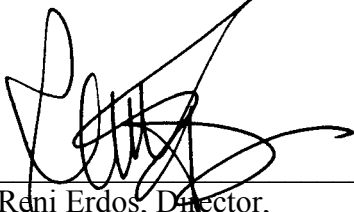
As towing procedures affect many municipalities and counties, and to extend the court's direction that all Bergen County municipalities be made aware of the proper implementation of their various statutory duties and responsibilities relating to towing services, all municipalities and counties are herewith **directed** to review their duties and responsibilities regarding towing services pursuant to the provisions of

¹ Liberty Mutual Insurance Company v. East Rutherford Towing, Inc. et al., Docket No. BER-L-2729-01, Honorable Elijah L. Miller, Jr., Law Division, Bergen County.

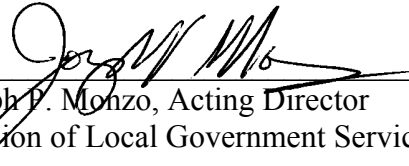
N.J.S.A. 40:48-2.49 et seq. and N.J.S.A. 40:48-2.54 et. seq. and to ensure that those obligations are properly implemented.

The statutes are attached to this Notice and can be viewed on the Division web site (www.nj.gov/dca/lgs) under "Miscellaneous Publications."

Documents (i.e., ordinances, resolutions) required to be filed with the Division of Consumer Affairs should be submitted to Robert J. Campanelli, Director's Office, Division of Consumer Affairs, 124 Halsey St., Newark, NJ 07101.



Reni Erdos, Director,
Division of Consumer Affairs
Department of Law and Public Safety



Joseph P. Monzo, Acting Director
Division of Local Government Services

Enclosure

Distribution:

- Municipal Clerks via GovConnect to distribute to Mayor and Governing Body, Municipal Attorney, and Police officials
- County Clerks to Board of Chosen Freeholders to distribute to Board members, Chief Executive and Administrative Officers and county law enforcement officials

Local Government Towing Regulatory Statutes

40:48-2.49 Regulation of operators engaged in removal of motor vehicles.

1. Notwithstanding the provisions of section 1 of P.L.1973, c.137 (C.39:4-56.6) or any other law, a municipality may regulate, by ordinance, the removal of motor vehicles from private or public property by operators engaged in such practice, including, but not limited to, the fees charged for storage following removal in accordance with section 3 of P.L.1987, c.127 (C.40:48-2.50), fees charged for such removal, notice requirements therefor, and the mercantile licensing of such operators.

The ordinance shall set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles. The regulations shall include, but not be limited to:

- a. A schedule of fees or other charges which an operator may charge vehicle owners for towing services, storage services or both;
- b. Minimum standards of operator performance, including but not limited to standards concerning the adequacy of equipment and facilities, availability and response time, and the security of vehicles towed or stored;
- c. The designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law;
- d. The requirement that such regulations and fee schedules of individual towers shall be made available to the public during normal business hours of the municipality.

L.1979,c.101,s.1; amended 1987, c.127, s.2; 1991, c.142, s.3; 1997, c.387, s.1.

40:48-2.50. Fee limits

All fees to be paid to an operator by a municipality for the storage of removed motor vehicles shall not exceed the following:

- (1) A limit of \$3.00 per day for the first 30 days of storage per vehicle; and
- (2) A limit of \$2.00 per day for the 31st day of storage and any day thereafter; and
- (3) A limit of \$400.00 per vehicle stored regardless of the duration of the storage, except that a waiver may be granted for good cause upon the request of a municipality by the Division of Local Government Services in the Department of Community Affairs.

L. 1987, c. 127, s. 3.

40:48-2.51. Penalty for violation of fee limits

An operator engaged in the removal of motor vehicles, or any employee, officer or agent thereof, who engages in a pattern or practice of knowingly violating the fee limits set in section 3 of P.L.1987, c. 127 (C. 40:48-2.50) may be liable to the municipality for a civil penalty of not less than \$25.00 or more than \$50.00 for each motor vehicle stored with the operator.

L. 1987, c. 127, s. 4.

40:48-2.54 Model schedule of towing, storage services adopted by municipality, county.

3. a. The governing body of a municipality or county which requires the towing and storage of motor vehicles without the consent of the owners of those vehicles shall adopt an ordinance or resolution, as appropriate, setting forth a model schedule of towing and storage services which they require and the rates therefor, which rates shall be based on the usual, customary and reasonable rates of operators towing and storing motor vehicles in the municipality or county, as applicable.

b. The governing body of every municipality or county setting forth a schedule of services and rates pursuant to subsection a. of this section shall implement a procedure to receive complaints and resolve disputes arising from the towing and storage of motor vehicles required by that municipality or county without the consent of the owner.

L.1997,c.387,s.3.

40:48-2.55 Model schedule of towing, storage services adopted by Division of Consumer Affairs.

4. a. The Division of Consumer Affairs in the Department of Law and Public Safety may establish a model schedule of towing and storage services identifying those services for which a fee may be charged by the governing body of a municipality or county. This model schedule, if established, shall be provided, upon request, to any municipality or county.

b. Each governing body that is required to adopt a resolution or ordinance pursuant to section 3 of P.L.1997, c.387 (C.40:48-2.54) shall submit its schedule of services and rates for the towing and storage of motor vehicles to the Division of Consumer Affairs for review within 90 days of the effective date of this act, or within 90 days of the adoption of that ordinance or resolution, whichever is later.

L.1997,c.387,s.4.

56:8-2.26 Charging of discriminatory, unusual rates for towing, storage.

5. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge rates which are discriminatory or are not usual, customary and reasonable rates for the towing and storage of motor vehicles as provided in section 3 of P.L.1997, c.387 (C.40:48-2.54).

L.1997,c.387,s.5.

40A:11-5 Exceptions

5. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if:

(1) The subject matter thereof consists of: ...

...

(u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;...