



TABS CONSULTING GROUP

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October 24, 2022

Vilda Vera Mayuga

Commissioner

NYC Department of Consumer & Workers Protection

42 Broadway

New York, NY 10004

**Re: Amendment of Subchapter EE of Title 6 of the Rules of
The City of New York regarding Towing**

Dear Commissioner Mayuga:

There is a hearing scheduled for Monday, October 31, 2022 regarding proposed changes to the towing regulations in the City of New York. I am sending you this letter before the Hearing so that some of the proposed changes **DO NOT BECOME part of the October 31st hearing. I believe going forth without changes also being made to the Administrative Code by the City Council **will render some of the proposed rules illegal and subject to legal challenge in the Courts.****

HOW CAN YOU MANDATE CHANGES COSTING LICENSED TOWING COMPANY TENS OF THOUSANDS OF DOLLARS, IN SOME CASE OVER A HUNDRED THOLUSAND DOLLARS, WHEN THE MANDATED TOWING RATE FOR DARP HAS NOT CHANGED SINCE 2011 – MORE THAN ELEVEN YEARS AGO – AND THE SAME FOR ROTOW. THE POLICE POUND RATE HAS NOT CHANGED IN 30 YEARS! THE CITY COUNCIL MUST ACT NOW OR THE MOTORING PUBLIC WILL NO LONGER BE PROPERLY AND ADEQUATELY SERVED.

I will comment on each of the Proposed Rules as stated in the “Statement of Basis and Purpose of Proposed Rule” issued by DCWP that we take issue with:

Bullet Point 1 – Amending the definition of towing to match the NYS Vehicle and Traffic Law is a long awaited change. The Department should also petition the Consumer Affairs Committee of the City Council to amend the Administrative Code. Additionally, the Department should remove 6 RCNY Section § 2-376 Application for License Exemption Certificates. This section is unenforceable since the activity described within this section is not considered towing pursuant to VTL 107-b. DCWP is only empowered to enforce the laws defined as towing activity.

Bullet Point 2 – Clarifying the type of insurance is fine; but increasing the coverage to \$1 million combined single limit, when \$750,000 should be adequate is strongly opposed. The Commissioner does not have the authority to require amounts other than what is stated in the Administrative Code. If such coverage is no longer available, it is up to the City Council to amend the requirement. It cannot be arbitrarily done by the Commissioner.

Was there any input from anyone who owns a NYC towing company before this proposed change and others were written? The cost of tow truck insurance in New York City is astronomical, and this additional increase will have a severe monetary impact on dozens of towing businesses; it might even force several businesses to close causing the loss of employment of hundreds of New York City citizens.

Bullet Point 4 – Remove requirement of the NYC Commercial Motor Vehicle Tax. It is claimed the Department cannot verify when this tax must be paid by an applicant, so this provision cannot be adequately enforced. The New York City Department of Finance requires any commercial vehicle registered in New York City over 10,000 lbs. to possess a current stamp on its windshield, documenting this tax has been paid. All NYC Commercial Tax Stamps expire May 31st of each year. Where is the confusion? This requirement protects the towing company from the potential receipt of a Criminal Court summons for failing to pay this tax. We believe the requirement should remain in place.

Bullet Point 6 – If a company elects to go out of business and the medallions have expired, what is the purpose of returning the expired medallions? The expiration date is pressed into the metal of each medallion. The business is no longer licensed. In most cases the expired medallions are disposed of when the trucks comes off the road and is sold or traded in. What enforcement power does the Department have over a non-licensed towing company? The language of “expired” medallions should be removed.

Bullet Point 7 – If the Department is removing the requirement of submitting 2 passport photographs for a tow truck operator license a/k/a Tow ID, if the individual applies online or via the mail, absent this requirement how will their image appear on their DCWP license or does the Department plan on issuing these licenses with no image?

Bullet Point 9 – There is a United States Supreme Court decision that deregulated the towing industry and withdrew jurisdiction from all the States and municipalities to govern or set rates on “consensual tows.” 49 U.S. Code § 14501 - Federal authority over intrastate transportation (c) MOTOR CARRIERS OF PROPERTY (1) GENERAL RULE. Except as provided in paragraphs (2) and (3) a political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

Based on this Court decision a section was added to the Code of Federal Regulations to give local municipalities the right to regulate the price of non-consensual towing – Section 14501(c)(2)(c) was added to deal with non-consensual towing.

(2)MATTERS NOT COVERED.

(c) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without

the prior consent or authorization of the owner or operator of the motor vehicle. *(a/k/a non-consensual towing)*.

Based on this Court ruling, DCWP was prohibited from setting consensual towing rates. This decision was recognized by DCWP. Tow trucks not participating in the DARP and ROTOW programs were required to re-letter their tow trucks with the language “rates upon request.”

DCWP lacks the jurisdiction or legal authority to cap the rate at \$100 for return consensual tows or capping it in Section 20-509 for any consensual tow. DCWP cannot arbitrarily cap or set any rate for a consensual tow. This, if passed will be subject to legal challenge in the Courts. Additionally, there is nothing stated in Title 19, Chapter 169.1 that obligates a towing company to return a vehicle to the location from which it was towed.

Bullet Point 10 – Why would DCWP prohibit a towing business from charging a fee when an invoice is paid with a credit card. The City of New York currently charges a fee when a credit card is used to make payment to the City of New York. New York State charges service fees for payment by credit card. Why can the City and other governmental agencies charge a fee while a private business cannot? The City has made it mandatory for a towing company to accept a credit card. The City has argued in the past since they use outside firms to process their credit cards they can charge a service fee of 2.49% or higher. Private companies also use private services to process their charges. Why is the City allowed to pass on this fee but a towing company cannot? Where is the difference? A program tow is capped at \$125 for the hook-up but being required to accept a credit card lowers the amount of income by an average of 3%. A towing company does not have the option of not accepting a credit card, while every other type of business can opt out of accepting credit cards or charge a service fee.

Bullet Point 11 – You are clarifying the hours for redemption. The City should add the language “businesses may be closed for redemption on New York City holidays”. This should also be added to the rules for ROTOW.

Bullet Point 12 – Requiring all DARP participants to also be a participant in the ROTOW program. Was there any industry input or discussions with any individual from the towing industry with either the legal division or the administration at DCWP before these changes were proposed? Is anyone at DCWP fully aware of what is happening on the streets of New York City at this current time? Are you as Commissioner aware of the devastation this proposed change will have on the towing industry if passed; on the needs of the NYC Police Department if passed; and on the citizens of New York City?

These are two independent programs, each with their own criteria and operate differently. It has always been the decision of towing companies to elect to participate in either one or both of these programs or not participate. To obligate a current DARP participant to purchase and insure two additional trucks is cost prohibitive. Years ago, it was the Department that began the devastation of the ROTOW program. From the inception of these programs, two tow trucks were sufficient for participation in both the DARP and ROTOW programs. It worked fine, with no issues. Several years ago the Department made the decision to require two tow trucks for participation in each program. Many companies determined it was not cost effective to purchase and maintain two additional tow trucks and pay massive insurance rates for the few towing assignments they received in these programs. These programs did not and do not warrant possessing four tow trucks. This caused several companies to withdraw from the ROTOW program.

The Department’s rational is there are not sufficient companies participating in the ROTOW program. Has the City done a study to find out why? Aside from the low pay to deliver a vehicle to the Police Pound, a towing company’s staff often has to make multiple trips to a police precinct to obtain the required paperwork. If the car is unclaimed additional paperwork has to be obtained from the police precinct. Sending unclaimed cars to the Police Pound results in losing

a driver and truck for the vast majority of the day due to the extremely slow intake at the Police Pound – anywhere from 4 – 5 hours while a tow truck driver sits in his truck. The Police Pound arbitrarily sets their hours and the amount of cars they will accept from a towing company on a daily basis. This is a major reason many companies presently refuse to participate in the ROTOW program. **Has DCWP held a meeting or coordinated with NYPD in a discussion regarding the the present program causing many towing companies not to participate?**

Now you are forcing DARP companies to participate also in the ROTOW program. They must purchase two additional trucks – a used tow truck, if available, is \$50,000 x 2 = \$100,000; plus they must insure these trucks at a minimum in New York City of \$13,000 per truck x 2 = \$26,000; plus they must pay \$650 per medallion for the two extra trucks x 2 = \$1,300. Under what right or law can DCWP mandate a tow truck company owner to go out and spend – at a minimum - \$127,300 as you are forcing them to do, when the price for a ROTOW vehicle returned to the police pound has remained the same for almost 30 years; at \$131.00 per vehicle. **Does DCWP have the right to mandate this change forcing tow truck companies to lose money on every ROTOW they perform?**

Further, we do not believe the DCWP Commissioner has the legal authority to make participation in ROTOW mandatory for participation in the DARP program, absent such language in the Administrative Code.

Bullet Point 13 – Not requiring DARP companies to possess the additional 1,600 square feet for storage required for companies participating in the ROTOW program. Why not also eliminate the requirement for two additional trucks for participation in ROTOW. By the Department conceding 2,400 square feet is now sufficient for the storage of DARP and ROTOW vehicles instead of the present 4,000 square feet for both programs, it is assumed that each company will be towing less vehicles to no longer warrant the additional storage space. If they City is acknowledging additional storage space is not required, why did they not eliminate the requirement for two additional trucks for participation in ROTOW? It is being acknowledged that

making every DARP participant a ROTOW participant, ROTOW participants will receive less vehicles, hence less storage space.

Bullet Point 14 – While you are clarifying the hours of redemption, you neglect to add towing companies may be closed for redemption on City holidays. This is practice for both DARP and ROTOW vehicles today.

Bullet Point 15 – This modification to this section makes no sense since to be a participant in the DARP program requires a towing company to possess two tow trucks, hence the 2,400 square foot requirement. The 1,200 square foot requirement per truck is redundant.

Bullet Point 16 – A towing company ending its' participation in the ROTOW program automatically ends its' participation in the DARP program. Again, we do not believe the Commissioner has a right to mandate participating in both programs, absent such language in the Administrative Code.

Bullet Point 18 – There is no objection to notifying the Department of the private lots businesses tow from. This is a requirement today. Why mandate when a towing company terminates its contract with a private lot, the necessity to notify the Department? Since the Administrative Code states it is the property owner's responsibility to post the required signage, we can understand a rule stating upon termination of a private property contract all signage referencing the towing company's name be removed or covered over with the name of the new towing company.

Bullet Point 21 – It is believed that the fines imposed upon towing companies are excessive and the manner in which summonses are drafted is improper. The administrative code allows fines as low as \$500 and as high as \$3,000, yet almost every fine imposed against towing companies by the Department is \$1,875, even for the smallest infraction. If a tow truck fails to display a credit card decal, isn't a fine of \$1,875 excessive? If a tow truck company fails to maintain electronic records the company is fined under the administrative code for not maintaining records and fined under each section of the RCNY

for failing to maintain all the required records, resulting in fines in excess of \$7,000. OATH Administrative Hearing Officers have acknowledged it is just the DCWP that imposes violations in the manner it does. Not maintaining records is a violation and should be one fine. If a company fails to respond to a DARP or ROTOW assignment it is fined \$1,875 for violating the administrative code and \$1,875 for violating the RCNY for the same infraction. It should be one fine. A tow truck that is improperly lettered receives fines for each side of the truck that fails to possess the proper information. An improperly lettered truck should be one violation and one fine.

We appreciate your consideration of the issues we have raised.

Very truly yours:



**Kimberly Brady
Towing Industry Representative**

cc:

**Philip Banks
Deputy Mayor for Public Safety**

**Frank Carone
Office of the Mayor
Chief of Staff**

**City Council Member Marjorie Velazquez
Chairperson Committee on DCWP**

DCWP Committee Members:

Shaun Abreu	Chi Osse
Erik Bottcher	Julie Win
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